

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 08-03
(December 28, 2007)**

On November 5, 2007, Parent filed a complaint with the Delaware Department of Education on behalf of her son (“Student”).¹ The complaint alleges that the Christina School District (“District”) violated state and federal laws relating to children with disabilities. Parent believes that the District failed to properly implement the student’s Individualized Education Plan by not providing speech therapy services.

The complaint has been investigated pursuant to federal regulations at 34 CFR§ 300.151 to 300.153 and the Department of Education’s regulations and procedures. Specifically, the investigation included interviews with the Special Education Director of the District, the Principal, the classroom teacher, the Educational Diagnostician at Student’s current school; and interviews with Parent. There was also a visit to the Students classroom. The investigation also included a review of Student’s educational records, including his individualized education program (“IEP”), evaluation and assessment reports, meeting minutes, and progress reports and other administrative documents provided by the District. Our investigation substantiates most of Parent’s concerns and a corrective action plan is entered as part of this Report.

FINDINGS OF FACT

Individualized Education Plan (IEP)

1. Student attends elementary school within the District (“Elementary School”) and is eligible for special education and related services. Student’s education is administered and supervised by an approved special program for children with disabilities within the District (“the Program”).
2. Student’s IEP team developed his current IEP in November 2007. Among other services, the current IEP provides that Student receive fifteen minutes of group speech and language services two times per week. He also has communication on his IEP with a related service of Occupational Therapy, consultative for one time per month for thirty minutes.

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.

3. Student's previous IEP expired on October 27, 2007 and an extension was granted to November 1, 2007. When the November 1, 2007 IEP meeting was conducted, District reports that there were no goals available for the Parent to review. The goals were on the teacher's home computer.
4. District reports that the goals would be printed out and sent home for the Parent to review.
5. Parent signed the placement page at the November 1, 2007 IEP meeting.
6. During a visit to the school on December 5, 2007, the assigned investigator requested the most recent copy of the Student's IEP. The investigator was told that the IEP was not completed because the goals were on the teacher's home computer. Yet, the IEP meeting was conducted and held, and the parent did not have a copy of the goals and a complete copy of the IEP being implemented.
7. Goal pages were faxed to the assigned investigator on December 6, 2007 and a letter was sent home to the Parent on December 11, 2007 with a copy of the Student's IEP with the Students goals for Parent's signature.

Speech and Language Therapy Services

8. The District acknowledges that the Program has not had sufficient personnel this school year and last school year to provide Student and other students all the speech services as required by their IEPs.
9. The District and the Program did not immediately inform families about staffing shortages. Rather, Parent first learned that Student was not receiving speech services the ninth week of the 2007 school year, when the classroom teacher confirmed that Speech Services were not being provided.
10. Special Education Director explained that the shortage of speech therapists the Program and District experienced was the result of low retention rates of Speech therapists, retirements, failure to fill vacancies, and the difficulty of recruiting new speech therapists.
11. The entire class was affected by this shortage. No students in the identified class have received speech services since the beginning of the year; although all other classes at this Elementary School have received Speech Services since the beginning of the school year.

12. A list was provided to Special Education Director from all district Educational Diagnosticians of the students who were not receiving speech and language therapy. This letter was sent to all parents on October 12, 2007 so that parents could be informed of the status of speech services.
13. Apparently, the Parents of this class did not receive the letter.
14. The District cannot explain why this error occurred. The letter was sent to the parents of this particular class on November 28, 2007 after being brought to the Districts attention by the Department through way of this Administrative Compliant.
13. The letter addresses that the District is having difficulty serving students in need of speech and language services. Compensatory speech services are being offered by the district in two locations in which the parent can bring their child in order to receive speech services. The letter does not address that transportation is a reimbursable expenses for parents.
14. The District sought requests for proposals for speech and language pathologist during the month of July 2007 and beginning of August 2007. Six vendors were approved in August. The District was only able to employ 2.50 speech and language pathologists; therefore, a shortage still existed at the beginning of the school year. The district is still short 3 full-time speech therapists.
15. In the interim, a Speech Therapist has been servicing the student when her schedule allows. This is a temporary measure until another speech and language therapist is secured.
16. Between October 23, 2007 and November 27, 2007, Student has received 1 hour of individual Speech and Language Services and 1 hour of group Speech and Language Services.
17. Student primarily communicates via PECS, communication book, and a Voice Output Device. Many of the objectives in his IEP relate to the use of alternative ways to communicate, augmentative communication aids or strategies are needed to maintain functional communication. Traditionally, a speech therapist has been responsible for overseeing the use of the PECS and augmentative communication device, including working with Student and training other staff members. Parent is particularly concerned about the loss of speech services Student has experienced and the impact on Student and other parts of his education from not being able to fully access Student's main communication modality.

CONCLUSION and CORRECTIVE ACTION PLAN

Individualized Education Plan (IEP)

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...” and “each public agency must ensure that reviews of the child IEP are periodically, but not less than annually to determine whether the annual goals for the child are being achieved...” (*IDEA Regulation* 34 CFR §§ 300.17, 300.320, 300.324 (b) (i) (ii)).

The district had an extension on the Students IEP yet was unable to conduct the meeting in full due to the fact that the Students goals were not available to discuss. Moreover, the Parent had to wait forty days for the goals to be delivered after the initial IEP meeting. Therefore, I find the District in violation of IDEA regulation cited above.

Speech and Language Services

Here, the District acknowledges that it has delivered only some of the speech services required by Student’s IEP this school year. It also acknowledges that other students in the Program, namely, the students in the specialized program at the Elementary School, did not receive all of the services to which they were entitled in a timely way. I am satisfied that the District’s recruitment efforts were extensive and timely in the sense that the Program moved quickly in the summer and after the beginning of this school year to locate and acquire the services of additional therapists from vendors. Nor did the investigation reveal that the District had trouble recruiting an additional therapist because it was reluctant to pay “market rate.” Instead, the various vendors and therapists that District Special Education Director contacted consistently replied that they were otherwise obligated or simply not able to provide services.

On the other hand, the District and the Program’s staffing shortage were predictable. The Program’s planning for the 2007-2008 was optimistic at best. The Program has for several years required the services of several speech therapists. The District and Program were aware of the nationwide shortage of speech therapists available to serve schools, the Program mentioned this as one of the reasons their students went without services.

The District compounded the staffing problem by waiting for almost one-quarter of the school year to pass before alerting the families of affected students about the loss of services. Promptly advising the parents of affected students would have permitted them to make other arrangements for services or to exercise the procedural safeguards available to them. It also may have helped foster the trust and cooperation between the school and families that is so important to successful outcomes for children.

The Program’s decision to eliminate all services to one of the neediest classroom of students is also questionable, particularly in light of its failure to notify families of the

decision. While the District's approach minimized the number of children disrupted by the staffing shortage, it concentrated the loss for the students in the neediest classroom and did so without attempting to prioritize their needs against the other students in the Program. In summary, Student and the other children in the Program's have been denied many of the speech services required by their IEPs and to that extent, denied the free, appropriate public education to which they are entitled. Accordingly, through its general supervisory responsibility and its authority at 34 CFR §300.151 to 300.153, 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 ten (10) school days of the receipt of this report, the District shall:

- a. Determine the number of hours (or partial hours) of speech and language services required by Student's IEP, but not delivered. Notify Parents of its specific plan for delivering those missed services to Student, such that all missed services are provided by June 6, 2008. If the District's plan includes the delivery of services outside the regular school day, it shall also include an offer of transportation;**
- b. Send the Department* a written summary of its calculations and compensatory service plan, specifically including a copy of the communication provided to Parents;**

2. Within thirty (30) calendar days of the receipt of this Report, the District shall:

- a. Identify all other students in the District who did not receive the speech and language services required by their IEPs;**
- b. Determine the number of hours (or partial hours) of speech and language services that each such student did not receive, based on the frequency and duration of services in each student's IEP and offsetting for any services actually provided;**
- c. Notify the parents of each such student of:**
 - i. the entry of this Report and of their ability to contact the Parent Information Center, Disabilities Law Program or the Department of Education for further information and assistance in understanding their and their child's rights; and**
 - ii. the District's calculation of compensatory hours due and its specific plan for delivering those missed services to the students, such that all missed services are provided by June 6,**

2008. If the District's plan includes the delivery of services outside the regular school day, it shall also include an offer of transportation

- d. Send the Department* a written summary of its efforts and calculations, specifically including the number of affected students and the total hours of undelivered services, and a copy of the communication provided to the affected families.**

3. Within thirty (30) calendar days of the receipt of this Report, the District shall:

- a. Submit a plan which ensures all district staff review and develop IEP's in a timely manner that affords parent participation. The District plan may include training, written directives or technical assistance.**

4. Not later than June 30, 2008, send the Department* a final report:

- a. Confirming the completion of its compensatory education plan and the delivery of all compensatory services accepted by affected students;**
- b. Briefly summarizing the number of hours of compensatory services delivered to students and the manner in which those services were actually delivered; and**
- c. Describing the status of its retention and recruitment planning for speech-language providers for the 2007-2008 school year.**
- d. Including a detailed list of trainings/meetings, memorandums, and/or the Districts written implementation plan to address timely annual reviews of IEP's.**

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

By: _____
Lisa D.V. Cuff
Education Specialist, ECEC Branch
Assigned Investigator

