

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 08-10
(April 25, 2008)**

REVISED May 28, 2008

On February 6, 2008, Parents filed a complaint with the Delaware Department of Education (“Parent Complaint”) on behalf of their son (“Student”).¹ The complaint alleges that the Pencader Charter School (“School”) violated state and federal laws relating to children with disabilities. Parents believe that the District failed to properly evaluate and identify their Son and has not provided Free and Appropriate Education (FAPE).

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 Educational Diagnostician at Student’s current school; and several interviews with Parent. The investigation also included a review of Student’s educational records, including his 504 Plan, evaluation and assessment reports, and other administrative documents provided by the District. The timeline for this complaint investigation was extended in order for the requested Independent Educational Evaluation to be completed.

FINDINGS OF FACT

1. Student is in his second year of attendance in a public Charter School (“School”) and has a 504 Plan.

2. In Parent’s initial request for evaluation she requested one that was “consistent with appropriate testing for a child with Autism Spectrum Disorder” *Parent participated in an eligibility meeting for special education on February 28, 2007. Parent signed agreement at the eligibility meeting at which Student was found ineligible for special education.*

¹ 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.

3. In an email dated October 15, 2007, Parent indicated that she wanted Student to be considered again for an IEP.
4. A conference was held on November 19, 2007 to discuss Student's eligibility for services under IDEA. Among the evaluation reports considered was the psychological report performed by school in 2006 in which Psychologist stated that the eligibility team could consider eligibility for Student as a child with a learning disability because of his limited written expression skills. However, psychologist further stated that given Student's good grades and solid academic achievement that the eligibility team may want to consider a 504 plan with appropriate accommodations in addition to the consideration of eligibility for special education and an IEP.
5. Parent taped this meeting and provided it to the DOE and the tape was reviewed as part of this investigation.
6. Team discussion on the tape indicates that members of the school team agreed that there was a written expression disability.
7. School based team agreed that the disability was not adversely affecting Student's progress in education and he was not in need of specialized instruction and related services. Parent disagreed with this decision.
8. Prior Written Notice was sent to the Parents on November 27, 2007 to summarize the November 19, 2007 meeting of eligibility. In this notice was documentation that the Student is not eligible for special education services but will continue to receive accommodations under his 504 Plan. There was a copy of Procedural Safeguards included in this notice.
9. Parent obtained at her cost an Occupational Therapy Evaluation on January 25, 2007 and an Oral/Written Language Evaluation done in February 5, 2008 and an Assistive Technology Evaluation done on March 19, 2008.
10. Parent released parentally obtained evaluations to School. School contracted with appropriate specialists to review the Student's most recent psychological report, occupational therapy reports and to make recommendations and suggestions. The review suggested that the eligibility Team review and implement accommodations as listed on the psychological report and consider a speech therapy evaluation specifically regarding expressive language. The Oral/Written Language Evaluation done on February 5, 2008 confirmed a written expression delay.
11. On January 8, 2008, Parent requested an Independent Education Evaluation, specifically requesting a neuropsychological exam.
12. On January 18th, 2008, school responded providing a list of three evaluators who could provide a comparable IEE.
13. Parent requested an evaluator that was not on the list provided by School.
14. School subsequently agreed to evaluator chosen by Parent.

15. IEE was completed on March 12, 2008. Recommendation of the IEE was that Student should be considered for eligibility classification as a student with a learning disability in written expression.

16. School describes numerous accommodations provided including excusals from some written reports.

17. School reports that Student's grades consist of A's and B's

18. DSTP scores from 2007 indicate that Student exceeded the standard in math and science and met the standard in reading, writing and social studies.

19. A meeting is scheduled to discuss the results from the IEE on April 28, 2008. Parent has requested that specific school personnel not attend the meeting. The DOE has approved the cost for IEP facilitation through the University of Delaware for this meeting.

CONCLUSION and CORRECTIVE ACTION PLAN

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..." (*IDEA Regulations* 34 CFR §§ 300.17, 300.320).

Eligibility under the IDEA requires that LEAs identify a child as a child with a disability if that child is eligible under one of the categories described in IDEA Regulations 34 CFR § 300.8 *and* if the disability has an adverse educational impact on the child. Evaluation must consist of procedures that determine if the child is a child with disability in one of the thirteen categories described under §300.8 and to determine the educational needs of the child.

Further, special education or specially designed instruction means "adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction (i) To address the unique needs of the child that result from the child's disability and "ii) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." [§300.39(3) (i) (ii)]

The eligibility team decision November 19, 2007 was based on the lack of adverse educational impact. Given the review of Student's grades, DSTP scores, teacher report, psychological and educational assessments, it is reasonable that the eligibility team did not find special education eligibility. Therefore I find no violation of IDEA 34 CFR §300.301 regarding initial evaluation. 504 Accommodations have been provided.

Since the November 19th meeting, more evaluations have been procured at the request of Parent with additional information that the team will consider after this report is issued.

Again, the team should consider any adverse educational impact, along with the additional evaluative information when making the decision regarding special education eligibility. The team should also consider the definition of specially designed instruction when considering the current accommodations and other support being provided to Student to see if these accommodations have adapted the content, methodology or delivery of instruction to such a degree that specialized instruction is required.

Finally, Parent has identified issues around Section 504 implementation that have not been part of this investigation. Parent has been advised that only alleged violations under the IDEA are part of this complaint investigation. Section 504 implementation disagreements must first be handled through a hearing process at the District or Charter School level. If Parent continues to believe there are 504 implementation issues, Parent may consider filing a complaint with the Office of Civil Rights.

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

By: _____
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Assigned Investigator

