

DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION
BRANCH

FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 09-03

On February 4, 2009, Mother filed a complaint with the Delaware Department of Education on behalf of her son (“Student”).¹ The complaint alleges the Christina School District (“the District”) violated state and federal regulations concerning the provision of special education services to children with disabilities. Specifically, Mother claims the District violated certain regulatory requirements related to a January 15, 2009 meeting to develop Student’s individualized education plan (“IEP”).

The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 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 review of the allegations in the Complaint, as well as phone interviews with Mother, the District’s Director of Special Education and the School’s Educational Diagnostician (“the ED”). The investigation also included a review of educational records relevant to the Complaint, including Student’s January 15, 2009 IEP, Notices of the IEP meeting, correspondence between the School and Student’s parents related to the IEP meeting, and the District’s Prior Written Notice concerning the proposed IEP. Mother also provided a copy of her December 1, 2008 letter to the District’s ED.

FINDINGS OF FACT

1. Student is 16 years of age, and is enrolled at the Middle School within the District. Student is eligible for special education and related services under the Individuals with Disabilities Education (“IDEA”) and 14 *Del. C.* § 3101 *et seq.* Student has an educational disability classification of “Orthopedic Impairment” as defined in 14 DE Admin Code § 925.6.13.
2. Mother and Father are divorced, and Student resides primarily with Mother. Both parents are in contact with the Middle School concerning Student’s education. Mother reports Father currently has no visitation with Student.
3. In August 2008, Student had surgery and Student was not able to attend school at the beginning of the 2008-2009 school year. He temporarily received homebound instruction through the District. Student then returned to the Middle School in October 2008 for half days.

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.

4. The District made attempts to schedule a meeting to review and revise Student's IEP. Rather than scheduling the meeting outright, the District proposed some dates in December 2008 to assure the date selected was mutually convenient for Mother and Father. Mother wanted to bring her attorney to the meeting, but her attorney was not available in December. At the same time, Father was urging the District to hold the meeting as soon as possible to address Student's IEP.
5. The District continued attempts to schedule the meeting, and next proposed January 15th as the meeting date. On December 10th, Mother confirmed in an E-mail message to the District "January 15, 2009 at 8:30 a.m. is a good time." On December 11th, Father confirmed in an E-mail message "the date and time will work".
6. State and federal regulations require school districts to notify parents of a scheduled IEP meeting no less than 10 business days before the meeting to ensure the parents will have an opportunity to attend. The notice must also indicate the purpose of the meeting, the time and location of the meeting, and who will be in attendance. 14 DE Admin Code § 925.22.0; 34 C.F.R. § 300.322. The regulations permit parents to include other individuals on the IEP team who have knowledge or special expertise regarding the child. 14 DE Admin Code § 925.21.1.6; 34 C.F.R. § 300.321(6). Parents and districts may agree to waive or shorten the 10 business day notice requirement on a case by case basis.
7. Following the E-mail exchange with Mother and Father, the District sent them written notice of the meeting (i.e. "the Notice"). The Notice stated the purpose of the meeting was to develop, review, and revise Student's IEP. The Notice identified the date, time, and location of the meeting, as well as the specific names and titles of those who would be in attendance on the District's behalf. The Notice requested Mother and Father inform the District in advance if they wished to include any other individuals on the IEP team.
8. Mother received the Notice on January 7th, approximately 8 calendar days before the January 15th meeting. Father received the Notice on or about the same date.
9. After receiving the Notice, Mother raised several concerns with the Notice. In part, Mother noted it did not list all the attendees, such as, her attorney, her father, and Student's Father. The District told Mother the Notice primarily identifies those who would attend on the District's behalf, and if Mother wished to invite others to the meeting, she could do so. Mother also requested the District make arrangements for the school nurse to attend the meeting. The District agreed to do so, but needed to confirm the nurse's availability.
10. After hearing Mother's concerns, the District reviewed the Notice again and realized it failed to identify Student and his private occupational therapist as attendees. On January 12th, the District sent an *amended* Notice to Mother and Father adding the private occupational therapist to the attendance list, as well as Student. Because the team planned to discuss transition planning, the District was responsible for inviting Student to the meeting. *See*, 14 DE Admin Code §§ 925.20.2 and 21.2. Mother received the *amended* Notice on January 12th.

11. The District eventually confirmed the school nurse would be available for the meeting. In addition, the District learned the private occupational therapist was not attending. The District therefore sent a *second amended* Notice to Mother and Father on January 14th adding the nurse to the list of attendees, but also removing the Dean and the private occupational therapist. Mother received the *second amended* Notice on January 14th.
12. The District held the meeting on January 15th as planned. Mother attended the meeting and brought her attorney, her father, and Student. Father was present with his wife. Also in attendance were: (1) the school nurse, (2) a general education and special education teacher, (3) the school principal, (4) the District's Director of Special Education, (5) the school psychologist, (6) the ED, (7) an assistive technology representative, (8) the occupational therapist, (9) Student's paraprofessional, and (10) the Dean of Students.
13. Of those present, Student's paraprofessional and the Dean of Students were the only persons attending on the District's behalf who were not identified in the Notice as attendees.
14. At the beginning of the meeting, Mother raised several concerns with the conduct of the meeting. Mother felt she did not receive timely or adequate notice of the meeting, and due to domestic familial issues, Father should not be participating. The District decided to proceed with the meeting anyway. Father was present and urging the District to review and revise Student's IEP. The District also had concerns with delaying the revisions to the IEP. Father had agreed to waive his right to the 10 day meeting notice. The District also reviewed a court order dated March 22, 2007 provided by Mother addressing the findings from a prior domestic issue between Father and Student. In the District's view, the court order did not permit the District to exclude or limit Father's participation in meetings. Mother left the meeting early with her attorney, her father, and Student. The team continued the meeting and developed Student's IEP in Mother's absence. Father and his wife remained for the duration of the meeting, and participated in the development of Student's IEP with the team.
15. After the meeting, the District sent a copy of the proposed IEP to Mother and Father, as well as Prior Written Notice regarding the proposed IEP. Mother received the proposed IEP and Prior Written Notice on or about February 4, 2009, approximately 20 calendar days after the meeting.

CONCLUSIONS

The Timeliness of the Notice of Meeting

Mother alleges she did not receive timely notice of the January 15th IEP meeting. Specifically, Mother claims she did not receive the Notice until January 7th, approximately 8 calendar days before the meeting.

As mentioned above, state regulations require school districts to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting no less than 10 business days prior to the meeting (unless mutually agreed otherwise) to ensure they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. The notice must indicate the purpose, time, and location of the meeting and who will be in attendance. 14 DE Admin Code § 925.22.1. *See also*, 34 C.F.R. § 300.322.

In this case, Mother was informed of the proposed meeting date almost a month before she received the Notice. Before scheduling the meeting, the District checked with Mother and Father far in advance to determine when they were willing to meet. The District did not proceed with the meeting in December due to Mother's scheduling difficulties. When the District proposed January 15th as the meeting date, Mother and Father both replied in early December it was an acceptable date.

The primary reason districts must notify parents of a scheduled meeting 10 business days in advance is to ensure they will have an opportunity to attend or participate. In this case, there is no dispute Mother was present for the January 15th meeting, had an opportunity to participate, and brought her attorney and her father to the meeting. Father urged the District to proceed with the meeting and address Student's IEP. Father also has a parental role on Student's IEP team. The District is obligated to recognize Father as a parent under the IDEA even though Mother is Student's primary custodian and Mother and Father are divorced. Under the circumstances, I find the District took steps consistent with state regulations to "ensure that one or both parents" were present at Student's IEP meeting and afforded an opportunity to participate. *See*, 14 DE Admin Code § 925.22.1.

The Adequacy of the Notice of Meeting

Mother alleges the Notice was deficient because it did not identify all persons who attended the January 15th meeting. Mother claims the District revised the list just days before the meeting, and failed to include a full list of attendees.

State regulations require school districts to inform parents 10 business days in advance who will be in attendance at an IEP meeting. 14 DE Admin Code § 925.22.1.

In this case, the District was not obligated to identify on the Notice all the individuals Mother and Father intended to invite to the meeting. As mentioned, parents are permitted to include other individuals on the IEP team who have knowledge or special expertise regarding the child. 14 DE Admin Code § 925.21.1.6. *See also*, 34 C.F.R. § 300.321(6). State regulations do

not require parents to inform school districts 10 business days before the meeting of the individuals they intend to invite.

It was reasonable for the District to amend the Notice and re-issue it when the District learned of omissions in the original list of attendees. The list of attendees was also changing as the meeting date approached. For example, the District thought Student's private occupational therapist was going to attend, but later learned she would not. The District also amended the Notice at least once to accommodate Mother's request for the school nurse to attend. The District took reasonable steps to send the amended Notice to both parents so it was received by them before the January 15th meeting. Student's paraprofessional and the Dean were the only persons at the meeting on the District's behalf who were not identified in the Notice as attendees. As noted, the District is responsible for complying with the regulatory requirement to inform parents of those who will be in attendance. However, I find no evidence the presence of the paraprofessional and the Dean impeded the parents' opportunity to participate in the meeting, nor did it deny Student services or the provision of a free, appropriate public education.

Provision of Meeting Minutes and Proposed IEP

Mother alleges the District failed to provide her with minutes of the meeting and the proposed IEP within 10 business days of the IEP meeting.

State regulations do not require the District to provide parents with meeting minutes or a proposed IEP within 10 business days of an IEP meeting. School districts may, but are not required to, develop minutes of IEP meetings. According to the District, no minutes of the January 15th IEP meeting were taken. In this case, Mother received the proposed IEP and the District's Prior Written Notice on February 4, 2009 consistent with state regulations.

Other Allegations

Mother alleges the proposed IEP was developed without her participation, and the only parental input was provided by Father who has no contact with Student. As discussed above, I find the District took steps consistent with state regulations to "ensure that one or both parents" were present at Student's IEP meeting and afforded an opportunity to participate. See, 14 DE Admin Code § 925.22.1. When Mother left the IEP meeting, the District reasonably felt it had a responsibility to continue. The District has since offered to meet with Mother to review the IEP and discuss any specific concerns or revisions she proposes.

Finally, to the extent Mother believes the proposed IEP is not appropriate, these findings are limited to the allegations in the complaint concerning the conduct of the January 15th meeting.

Having found no denial of services or systemic regulatory violation, no corrective action plan is appropriate or required. And to that extent, Student was not denied the free, appropriate public education to which he is entitled.

By: _____
Jennifer L. Kline
Assigned Investigator
Education Associate

Date Issued: April 3, 2009