

DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION
BRANCH

FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 09-04

On March 11, 2009, Parents filed a complaint with the Delaware Department of Education on behalf of their son (“Student”).¹ The complaint alleges that the Lake Forest School District (“District”) violated State and federal regulations concerning the provision of special education services to children with disabilities. Specifically, Parents claim that the District violated certain regulatory requirements related to the provision of services in accordance with Student’s individualized education plan (“IEP”) that was developed at a meeting on May 21, 2008 and that District violated other State and federal requirements.

This complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the Delaware 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 a phone interview with Student’s Mother; a review of information from Student’s educational record relevant to the complaint; and interviews with District staff knowledgeable about Student, including the District’s Supervisor of Special Programs. The investigation also included a review of an independent observation report prepared by Mr. Jim Sinclair, Rehabilitation Counselor, provided to District by Parents.

FINDINGS OF FACT

1. Student is 18 years of age and is enrolled at the High School within 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 “Autism” as defined in 14 DE Admin Code § 925.6.6.
2. Parents enrolled Student in the School District in September 2005. This followed several years where Student was enrolled in and attended private, parochial schools in Delaware.

¹ The Final Report identifies some people and places generically to protect personally identifiable information about 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. District personnel report that Student has made significant progress since enrolling in the High School. Most notably, progress was reported in the area of general social skills and appropriate interactions with non-disabled peers and adults.
4. The IEP that was in effect in September 2008 was developed on May 21, 2008. Parents participated in that meeting and agreed with the IEP. They were provided with their Notice of Procedural Safeguards in accordance with State and federal requirements.
5. The IEP states that Student is to be “served in the regular classroom less than 40% of the day.” It was understood by members of the IEP team, including Parents, that Student was to be included with non-disabled peers during his Creative Writing and Physical Education classes. He has attended and participated in these classes since the start of the 2008-2009 school year.
6. The District has a policy requiring that “teachers and other service providers have direct knowledge about special education students in their charge.” The District meets the requirement by ensuring appropriate staff have access to students’ IEPs and are knowledgeable regarding: specific accommodations, modifications, and supports that must be provided to the student; the nature of the student’s disability or disabilities, the student’s present levels of performance; technology devices and testing accommodations required by the IEP; and any behavior problems of the student. In order to ensure implementation of this policy, school staff complete an IEP Summary for each student with a disability and distributes this to each teacher and service provider responsible for implementation of the IEP. This was completed for Student, and documentation was provided demonstrating that teachers responsible of implementation of the IEP had signed District Form 6.0 stating that they had received the IEP Summary consistent with the policy.
7. Interviews with staff responsible for implementing Student’s IEP revealed that each teacher was extremely knowledgeable about Student, his needs, and the program in place at the time of the complaint. This included the special education teacher and the general education teachers (Creative Writing and Physical Education teachers) in whose classes Student participates with non-disabled peers.
8. On December 8, 2008, Mr. Jim Sinclair, Rehabilitation Counselor, conducted an observation of Student at the High School. School staff reported that they were informed that Mr. Sinclair’s observation was for the purpose of “acquiring a service dog” for which the parents had expressed interest.
9. On December 11, 2008, school staff met with Student’s Parents. At that time, Parents provided the written report of Mr. Sinclair’s observations from the December 8, 2008 school visit. Parents state that this meeting was an IEP team meeting, and the minutes of the meeting were presented on School District Form 4.4 M, titled IEP Meeting minutes. However, when the investigator inquired about this meeting, he was informed that the meeting held on December 11 was not an IEP team meeting; rather it was a follow-up meeting to a November 24 meeting conducted by

the Division of Vocational Rehabilitation and attended by Parents, Student, and some school staff.

10. Mother reported in the interview with the investigator that the allegations concerning the failure to properly implement the IEP were a result of Mr. Sinclair's report. Specifically, the report states that in the creative writing class "[Student] does not participate in the same class activities or work on the same assignments as the other students". Mr. Sinclair's report also says that the creative writing teacher said that he had not seen a copy of Student's IEP as it related to writing skills. Additionally, Mother stated that Student was not permitted to participate in the physical education class in the same manner as his non-disabled peers.
11. In the interviews conducted with the Physical Education teacher and the Creative Writing teacher, both reported that Student is fully integrated into their classes. In the physical education class, Student participates in the activities as does the non-disabled students in the class. The focus of this elective class is "team sports," and at a time that the observation occurred, Student was sitting out of the activities with his non-disabled teammates because his team was not participating at that time.
12. The Creative Writing teacher reported that Student's class assignments are modified to address his present level of academic performance. Student had not completed his assignment prior to the day of Mr. Sinclair's class visit, and therefore, he was working independently at the time of Mr. Sinclair's observation. The teacher reported that he worked directly with Student after Mr. Sinclair ended his observation of the class, and he denies making the statement that he had not seen a copy of Student's IEP as written in Mr. Sinclair's report.
13. School staff reported that they were unaware that Parents were dissatisfied with Student's IEP and the services provided or that the Parents had any concern that the IEP was not being properly implemented prior to the meeting held by the Division of Vocational Rehabilitation on December 11, 2008.

CONCLUSIONS

Specifically, Parents allege the District does not have a method of ensuring that general education teachers have access to students' IEPs and, therefore, are not knowledgeable about students' needs and their program and that school staff have not implemented Student's IEP while in physical education and creative writing classes.

Ensuring General Education Teachers Have Access to IEPs

State and federal regulations require "accessibility of each child's IEP to each regular education teacher... and others responsible for its implementation so that they are informed of their responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." See, 14 DE Admin Code § 925.23.3; 34 C.F.R. § 300.323(d).

In this case, based upon the Finding of Fact #6, the District has demonstrated that it has procedures to ensure that teachers and other service providers have access to students' IEPs, and there is a system in place that meets State and federal requirements. Therefore, I find no regulatory violation.

Additionally, there is no State or federal provision requiring each service provider to maintain a copy of Student's IEP, but only to have accessibility to the IEP. District meets this requirement by ensuring that appropriate staff has copies of the IEP Summary (Form 6.0). Therefore, while the investigator cannot determine whether the Creative Writing teacher was accurately quoted in Mr. Sinclair's observation report, that matter is moot because the IEP Summary provides sufficient information to meet the intent of regulatory provisions. Also, in this case, the teacher was familiar with Student and his needs as Student was in his class previously.

IEP Implementation While in the General Education Environments

Parents alleges that Student's IEP was not being implemented in accordance with the requirements while participating with non-disabled peers in the creative writing and physical education classes. This allegation apparently is a result of the observation and subsequent report by Mr. Jim Sinclair, Parents' consultant. Additionally, according to Student's mother during the interview with this investigator, it was expressed that if the general education teachers were not knowledgeable about Student's IEP (see allegation above), they would be unable to provide the modifications, accommodations, and other program requirements for Student. As stated above, there is no evidence that the general education teachers were not knowledgeable about Student and his program. In fact, both teachers appeared very knowledgeable about Student, his disabilities, needs, and program as written in the IEP. Both had documented that they had received a copy of the District's IEP Summary Form 6.0 for Student's IEP that was in place at the time of the complaint.

In conclusion, there is no supporting information or documentation that demonstrates the general education teachers were not properly implementing Student's IEP. That is not to say that there may have been some communication problems between Parents and certain District staff or, that at the time of the complaint, Parents were no longer in agreement with the program. However, that does not constitute a violation of regulations, and in this case, there is no evidence to substantiate Student was denied services in accordance with the IEP developed on May 21, 2008 and approved by Parents.

Additional Issue: December 11, 2008 Meeting

Parents alleged that the meeting conducted on December 11, 2008 was an IEP meeting, and it was documented on District Form 4.4 M. However, a close comparison of the documents of that meeting with previous IEP meetings conducted for Student reveals that it was not an IEP meeting. Not all of the IEP team members were present as required by 14 DE Admin Code § 925.21.0 or 34 C.F.R. § 300.321 nor is there documentation of the notice of an IEP meeting as

required by 14 DE Admin Code § 925.22.0 or 34 C.F.R. § 300.322. There is no requirement that all IEP team members participate in non-required meetings nor are their requirements for notification of such meetings. To ensure clarity and avoid any confusion on the part of parents and others, however, it is recommended that District staff be more careful when providing minutes to meetings other than IEP team meeting required by the regulations.

Finally, to the extent that Parents believe the IEP is not appropriate, these findings are limited to the allegations in the complaint. These findings do not limit additional actions available to the Parents under the IDEA. Having found no denial of services or systemic regulatory violation, no corrective action plan is appropriate or required.

By: /s/ Edward Wulkan

Edward L. Wulkan
Assigned Investigator
Consultant

Date Issued: May 7, 2009