

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 09-5
(June 12, 2009)**

On April 13, 2009, Parent filed a complaint with the Delaware Department of Education on behalf of her son (“Student”).¹ The complaint alleges the New Castle County Vocational Technical School District (“the District”) violated state and federal regulations concerning the provision of a free, appropriate public education to Student. Specifically, Parent claims: (1) the District failed to implement the accommodations in Student’s IEP; (2) the goals in Student’s IEP are not measurable; and (3) Student’s removal from the school basketball team was detrimental to him.

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 interviews with the District’s Supervisor of Special Education, the Educational Diagnostician (“the ED”), Student’s guidance counselor, the Principal of Student’s current school, the student advisor, the school psychologist, Student’s career teacher, the paraprofessional working with Student, and two of Student’s special education teachers. The investigation included a review of Student’s educational records, including the November 3, 2008 IEP, the behavior plan, functional behavior assessment, evaluation and assessment reports, meeting minutes, progress reports and other educational records provided by the District. The investigation also included interviews with Parent by phone.

FINDINGS OF FACT

1. Student is currently 17 years of age, and is enrolled in the 11th grade at the High 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 “Learning Disability” as defined in 14 DE Admin Code § 925.9.0.
2. Student began attending the High School as a 9th grade student in the 2006-2007 school year. Student was previously identified as a student eligible for special education services when he attended school in another district.

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.

10th Grade
2007-2008 School Year

3. On April 21, 2008, the District reevaluated Student and determined his continued eligibility for special education and related services. The evaluation team concluded Student has a learning disability in four areas: (1) listening comprehension; (2) written expression; (3) basic reading skills; and (4) reading comprehension. The team noted Student has attention-deficit hyperactivity disorder (“AD/HD”) and mild to moderate problems with paying attention in class and hyperactivity. Student’s teachers also noted his academic difficulties stem from his organizational problems, lack of motivation, distractibility, and uncompleted work. In addition, a speech and language evaluation revealed weaknesses in Student’s receptive and expressive language skills.
4. Following Student’s reevaluation, the IEP team revised his IEP on April 21, 2008. The April 21, 2008 IEP focuses primarily on Student’s need for organization, work completion, motivation, and attentiveness. The team also completed a functional behavior assessment and behavior intervention plan.
5. The District intended to implement the April 21, 2008 IEP through most of the 2008-2009 school year. In the fall of 2008, however, concerns were raised over Student’s progress, and the District revised the IEP earlier than planned.

11th Grade
2008-2009 School Year

6. On November 3, 2008, the District convened the IEP team and revised Student’s IEP. All required participants attended the meeting. The November 3rd IEP is Student’s current IEP and the focus of the complaint investigation.
7. The November 3rd IEP describes accommodations to include:
 - (a) use of a Franklin Speller;
 - (b) use of binders and folders for organization;
 - (c) use of a graphing calculator;
 - (d) teacher cues, prompts and teacher feedback to reinforce positive behavior;
 - (e) tapping Student on his shoulder if he is off task and distracted;
 - (f) rechecking Student’s understanding of directions and concepts;
 - (g) test retakes, after remediation, if Student’s score is below 75%; and
 - (h) use of a behavior self-checklist to track Student’s behavior and assignment completion. With this accommodation, Student would receive a self-checklist each week from a designated teacher. Student was responsible for carrying it to each class, and having each teacher initial it daily. Student was also responsible for taking the checklist home each night for Parent to initial.

8. The IEP contains one goal for improving Student's organization skills, and another goal for increasing Student's participation in learning activities and tasks. There are, however, no present levels of performance identified for either goal. In addition, there are no academic goals in the IEP to measure Student's progress in the areas he was identified to have a learning disability.
9. The IEP provides Student with speech therapy services for 30 minutes a week. The IEP also contains a goal to track Student's progress in improving his receptive and expressive language skills, as well as his auditory memory. Progress reports demonstrate Student's improvement in this area.
10. At the November 3rd IEP meeting, the team also reviewed the behavior intervention plan and made minor revisions. The behavior plan focuses on interventions to keep Student on-task, focused, and organized. For example, the behavior plan requires Student to write down all his assignments on his self-checklist, and show it to Parent each night. The plan designates certain teachers to review Student's checklist each day.
11. In addition, the behavior plan requires Student to stay after school 2 days a week for the "Extra Time Program". "Extra Time" is an after school tutoring program held in the library and offered to all students who wish to participate. During "Extra Time", a special education teacher is also available to assist students with disabilities. School records indicate Student attended "Extra Time" only twenty-four times since September 2008. Student did not attend "Extra Time" on a regular and frequent basis.
12. During the first semester, Student received special education instruction in a resource room setting for core academics containing approximately 13 to 14 special education students. During the second semester, Student was placed in the resource room for one academic course, and an inclusion class for the other. During both semesters, Student received instruction in the general education classroom for his career courses.
13. Student's teachers report his behavior and academic performance were better in the beginning of the school year. As the year progressed, however, Student became less organized and disinterested in school work.
14. Student did not make meaningful progress on his IEP goals related to organization and engagement in learning tasks.
15. During the school year, Student played on the school basketball team. Parent reports basketball is important to Student and builds his socialization skills and self-esteem. Student's teachers were also aware of his strong interest in basketball. During the season, Student was removed from the basketball team due to receiving a low grade point average. Parent reports Student's removal from the basketball team was devastating to his confidence and attitude toward school. Parent explained she worked with Student at home for several months to improve his morale.

16. According to the District, Student was found ineligible for interscholastic basketball as a result of his low grade point average. The high school is a voluntary member of the Delaware Interscholastic Athletic Association (“DIAA”) and subject to DIAA’s athletic eligibility requirements. DIAA’s regulations require students to meet certain academic criteria to maintain eligibility to participate in interscholastic athletics. See, 14 DE Admin Code § 1009.2.6.1. However, a student who is receiving special education and is precluded from meeting DIAA’s academic requirements due to a modification in the grading procedure or course of study may be deemed eligible by the principal if the student is making satisfactory progress in accordance with the student’s IEP. See, 14 DE Admin Code § 1009.2.6.1.1.
17. In addition, the District has its own athletic eligibility policy governing its students. The District requires students to maintain a minimal grade point average and have passing grades in certain coursework. Student was deemed ineligible for high school basketball because he did not meet the academic eligibility requirements. At this time, the 2008-2009 school basketball season is over.
18. In January 12, 2009, a school conference was held at Parent’s request with the principal, Student’s Algebra teacher, and Parent to discuss Student’s failing grade in Algebra. Efforts were discussed to improve Student’s academic performance. In addition, Student was not consistently using the self-checklist described in his IEP and behavior plan. Student would either lose the checklist or forget to give it to his teachers and Parent. The school reports it attempted to use checklist with Student for the past two school years, but Student did not comply. As a result, the school has very few records of completed checklists for Student. The school modified the practice a few times and gave Student the checklist weekly, instead of daily. But, using the checklist with Student was not successful.
19. In February 2009, the school decided to stop using the checklist. Parent was in agreement. As an alternative, the school began sending daily e-mails to Parent concerning grades, behavior, work due, or other matters. Student’s teachers provided comments to share with Parent each day. In fact, the school frequently communicated with Parent and was responsive to the questions and comments Parent raised.
20. During the school year, Student received a failing grade on a final exam. Parent requested Student be permitted to retake the final exam. Parent noted the accommodations in Student’s IEP allowing him to retake tests, after remediation, if his score was below 75%. At first, the District denied the request explaining no students were permitted to retake final exams for various reasons. Parent protested to District officials citing the accommodations in Student’s IEP. The District later reversed its decision and permitted Student to retake the final exam. Student did so, with extended time, and received a passing grade.
21. In April 2009, a school conference was held with Parent, Student, the principal, Student’s teachers, and guidance counselor to discuss Student’s poor academic performance. The group discussed Student’s needs and strategies for better organization, attentiveness, and

completion of work. To assist Student academically, the group decided Student would be pulled out of a career class for one period to work one on one with the paraprofessional already working with Student. Parent was agreement.

22. For the remainder of the school year, Student met with the paraprofessional for one class period, and worked on classroom assignments, homework, and organizational skills.

CONCLUSIONS

Implementation of the Accommodations and Supports in Student's IEP

In her complaint, Parent alleges the District failed to follow the accommodations and supports outlined in Student's IEP.

An IEP must contain 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: (i) to advance appropriately toward attaining the annual goals; (ii) to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and (iii) to be educated and participate with other children with disabilities and nondisabled children. 14 DE Admin Code § 925.20.1.4; 34 C.F.R. § 300.320(a)(4). An IEP must also contain a statement of any individual appropriate accommodation that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments. 14 DE Admin Code § 925.20.1.6; 34 C.F.R. § 300.320(a)(6)(i).

As mentioned, the accommodations and supports in Student's IEP primarily focus on Student's organization, distractibility, attentiveness, and work completion. Student's teachers report following the accommodations and supports in Student's IEP. ***I find no regulatory violation with respect to the implementation of the accommodations and supports in Student's IEP.***

Parent also claims the District failed to follow the accommodations in Student's IEP by preventing Student from retaking the final exam for which he received a failing grade. At the time Parent filed her complaint, Student had not yet repeated the final exam. This issue is now moot. Student has retaken the final exam and received a passing grade.

Measurable Annual Goals and Present Levels of Performance in Student's IEP

Parent alleges the goals in Student's IEP related to organization and engagement in learning tasks are not measurable.

An IEP must include a statement of measurable annual goals, including academic and functional goals designed to: (i) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (ii) meet each of the child's other educational needs that result from the child's disability. 14 DE

Admin Code § 925.20.1.2; 34 C.F.R. § 300.320(a)(2)(i). Measurable goals are important for evaluating the effectiveness of a child's IEP.

The first goal in Student's IEP states: "Student will improve organizational skills related to assignments handed in 80% of the time." This goal is vague in its terms, and falls short of meeting regulatory requirements. For example, the goal does not adequately define what organizational skills Student must improve, and specifically, in what manner.

The second goal in Student's IEP states: "Student will engage in learning tasks and activities that are routinely assigned by the teacher for which grades or credits are received 85% of the time. These behaviors include preparing for a learning activity, attempting assignments, and demonstrating growth." The second goal, similar to the first, is not sufficiently measurable. It does not, for example, clearly state what behavior is required of Student, nor does it adequately state the criteria for meeting the behavior.

In addition, there are no academic goals in the IEP to measure Student's progress in the areas he was identified to have a learning disability. During interviews, school staff did not establish how Student's IEP addresses his learning disability in the areas of listening comprehension, written expression, basic reading skills, and reading comprehension.

Finally, Student's IEP does not include a statement of his present levels of performance in the areas of his unique need. An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. 14 DE Admin Code § 925.20.1.1; 34 C.F.R. 300.320(a)(1). A present level of performance is an important, objective measure for presenting the child's needs in the IEP and providing a beginning point against which progress can be measured. Present levels of performance are a necessary component of IEPs, and must be stated in objective terms. In this case, Student's IEP does not identify the required starting points for measuring his progress on IEP goals.

For the reasons stated, I find violations of 14 DE Admin Code §§ 925.20.1.1 and 1.2 regarding the requirement an IEP must contain measurable goals and present levels of academic and functional performance.

Removal from the School Basketball Team

Parent alleges Student's removal from the basketball team was detrimental to Student's confidence and socialization skills. As described above, the District determined Student ineligible for participation in interscholastic athletics due to Student's academic performance and low grade point average. This decision was consistent with the District's policy. Student's IEP does not address modifications to the grading system or required courses of study for Student. Student's IEP does not describe Student's participation on the school basketball team as necessary for Student to receive FAPE. ***I find no violation of state or federal special education regulations with respect to Student's removal from the school basketball team.***

Other Allegations

Parent generally claims the District “singled out” Student and treated him “like an example to others”. It was explained to Parent the Department’s investigation is limited to investigating violations of state and federal regulations relating to special education and the Individuals With Disabilities Education Act. To the extent Parent raises non-IDEA concerns, the Department’s authority is limited to allegations implicating the provision of special education services.

CORRECTIVE ACTION PLAN

As a result of the Department’s investigation, the Department directs the District to take the following corrective actions:

1. The District shall promptly convene an IEP team meeting on a mutually agreeable date with Parent to develop measurable annual goals, services, and supports based on Student’s needs, including those identified as part of his learning disability. The team should also develop and revise Student’s IEP to include objective present levels of performance.

2. The District shall provide compensatory services to Student based on the measurable annual goals developed by the team as described in Paragraph #1.

3. The District shall calculate a number of instructional hours owed to Student as compensatory services. As a basis for calculating the compensatory services, it is reasonable to expect Student would have received a minimum of 2 hours a week of specialized instruction in his program and placement to address his educational needs. Therefore, the number of compensatory service hours shall be calculated at a rate of 2 hours a week (for the weeks school was in session) beginning with the November 3, 2008 IEP.

4. If the District deems it appropriate, the District may satisfy part or all of Student’s compensatory service hours by reimbursing Parent for any private tutoring already paid for and subtracting those instructional hours from the total compensatory hours owed.

5. The District may also satisfy compensatory service hours through a private tutoring arrangement (reviewed and approved by the District) or through school personnel providing such services to Student, as long as the schedule and location of services are agreed to by Parent.

6. By September 15, 2009, the District shall provide to the Department a schedule which details the total hours of compensatory services owed, and the manner such services will be delivered to Student in a written statement signed by Parent and a District representative.

7. If the District and Parent cannot agree on how the compensatory services will be delivered, either the District or the Parent shall notify the Department.

8. By October 15, 2009, the District shall: (a) provide in service training to all special education staff at the High School on how to develop measurable annual goals and present levels of performance in the IEPs of students with disabilities; (b) establish procedures for evaluating the effectiveness of this activity; and (c) provide the Department with a copy of written confirmation the in-service training was provided.

By: _____
Jennifer L. Kline
Assigned Investigator
Education Associate

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