

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 09-07 (August 25, 2009)

On May 21, 2009, Complainant filed a complaint with the Delaware Department of Education on behalf of Student.¹ The complaint alleges the Christina School District (“the District”) violated state and federal regulations concerning the provision of a free, appropriate public education to Student.

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 principal and assistant principal of Student’s current school, the educational diagnostician, and Student’s teachers. The investigation also involved a review of Student’s educational records, such as the November 7, 2008 IEP, the behavior plan, functional behavior assessment, disciplinary referrals, evaluation and assessment reports, progress reports, and other educational records provided by the District. The investigation included a phone interview with Parent.

FINDINGS OF FACT

1. Student is currently sixteen years of age and, at all relevant times, attended the ninth 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 currently has an educational disability classification of “Learning Disability” as defined in 14 DE Admin Code § 925.9.0.
2. By way of background, Student was referred for a special education evaluation when she was in the sixth grade based on a diagnosis of attention deficit hyperactivity disorder (“AD/HD”) and academic concerns in school. Following the evaluation, the District identified Student as eligible for special education services with an educational disability classification of “Other Health Impairment”. *See*, 14 DE Admin Code § 925.6.14. The District developed and implemented an IEP for Student in the sixth grade. Student’s IEP was then reviewed and revised on an annual basis during the seventh and eighth grade years.

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.

*Student's First Ninth Grade Year
2007-2008 School Year*

3. In September 2007, Student entered the High School as a ninth grade student. Early in the year, Student began failing several classes, and was not completing her work. In November 2007, the school psychologist conducted a psychoeducational evaluation to evaluate Student's skills. Achievement testing showed Student's reading and spelling skills were average, but her math skills were in the borderline to deficient range at a fifth grade level. The District re-evaluated Student and determined she has a learning disability in the areas of mathematics reasoning and calculation. The team also noted Student's organizational problems and lack of task completion contributed to her academic challenges. Teachers felt Student was not "buying into school" and not taking school seriously. The team determined Student continued to be eligible for special education services, but changed her disability classification to "Learning Disability" in the area of math. Parent attended the evaluation team meeting and indicated agreement with the eligibility decision.
4. On November 2, 2007, the IEP team revised Student's IEP. Parent attended the team meeting and signed in agreement with the program and placement outlined in the IEP.
5. The November 2, 2007 IEP describes Student's needs in the areas of math, task completion, and organization. It contains goals and objectives to promote Student's progress in the areas of reading, writing, math, and behavior in task completion and organization. Student was placed in inclusion classes for core academics, and general education classrooms for electives. Student also participated in two curriculum assistance classes where she received small group instructional support.
6. Despite the supports in her IEP, Student was displaying behaviors that interfered with her learning. Throughout the 2007-2008 school year, Student received approximately ten disciplinary referrals for various behaviors, including skipping class, tardiness, school disruption, inappropriate language, defiance, and assault. Student received a total of three detentions, four days of in-school suspensions, and nine days of out-of-school suspensions from September 2007 through April 2008.
7. On May 5, 2008, the District convened the IEP team and completed a functional behavioral assessment to identify the triggers of Student's behaviors and ways to address them. The team also developed a behavior intervention plan to reduce Student's problem behaviors, such as skipping class, being uncooperative, late to class, and refusing to do classwork. The team established a "daily sign-in sheet" for Student to carry and give to all of her teachers to document her attendance each day. Parent attended the May 5, 2008 meeting and participated in the development of the functional behavior assessment and behavior plan.
8. During the 2007-2008 school year, Student was frequently absent or late to school. Student failed most of her courses, and made little to no progress on her IEP goals. The District retained Student and required her to repeat the ninth grade.

*Student's Second 9th Grade Year
2008-2009 School Year*

9. In September 2008, Student began her second ninth grade year at the High School. On November 6, 2008, the District convened the IEP team and revised Student's IEP. All required participants attended the meeting, including Parent. ***The November 7th, 2008 IEP is Student's current IEP and the focus of the complaint investigation.***
10. The November 7th, 2008 IEP describes accommodations addressing Student's areas of need, to include:
 - (a) For math, use of a calculator;
 - (b) For math problem solving, use of step by step procedures and modeling;
 - (c) For task completion, prompts to refocus, repeat directions, up to 50% extended time on classwork and tests;
 - (d) For behavior, use of a positive behavior support plan;
 - (e) For writing, graphic organizers, clarify writing prompts; and
 - (f) For reading comprehension, make comments in margins, and make predictions.
11. The November 7th, 2008 IEP also includes three goals for improving Student's skills in written expression, reading comprehension, and numeric reasoning. There are present levels of performance stated for each goal, as well as benchmarks to measure Student's progress in each area.
12. Student was placed in inclusion classrooms for four academic courses, and general education classrooms for two elective courses. Student also participated in two curriculum assistance classes where she received small group instructional support from a special education teacher.
13. On November 6th, the IEP team also reviewed Student's behavior plan and made minor revisions. The team removed the use of a daily sign-in sheet because Student was not using it. The team noted Student's problem behaviors were continuing and it was necessary to continue the behavior plan. The behavior plan requires Student's teachers to provide her with regular praise as positive reinforcement, to monitor Student's behavior, and maintain regular contact with Student's mother to keep her informed of Student's performance. The behavior plan also requires Student to attend regular appointments through the "Wellness Center" located on the school's campus. Student did not, however, attend her appointments consistently.
14. Teachers report Student showed little to no progress responding to the behavior plan. Student was continuing to struggle academically and behaviorally. She was not completing her work, and her behavior toward school staff was defiant and disrespectful. Teachers observed Student was disorganized and not interested in school work.

15. From September 2008 through December 2008, Student received a total of ten days of out-of-school suspensions, one detention, and one day of in-school suspension.
16. On December 15, 2008, Student got into a fight with another student. Given the total record of Student's behavior, school administrators decided to assign Student to the in-school alternative program for students with discipline problems. In the "School Program", students were placed in a single classroom all day with other students having a record of disruptive behavior. The students were both special and general education students from different grade levels. The School Program was supervised by one teacher who also provided instructional support to the students. Each day, students would work on the classroom assignments and material provided by their regular high school teachers. Special education students assigned to the School Program would also receive some support from a special education teacher. Assignment to the School Program was a disciplinary measure, and students were not permitted to attend classes or mingle with the general student population. Students were responsible for successfully completing twenty consecutive days in the School Program before they could return to the regular school environment.
17. Student started in the School Program on December 15, 2008, and responded well. She completed twenty days with no behavior problems, and she was able to focus better on her work. As a result, school officials and Parent agreed to extend her placement in the School Program. This decision was made by school officials, and not the IEP team.
18. In March 2009, Student was released from the School Program and returned to her regular class schedule with her peers. But only a few days later, on March 6, 2009, school administrators were told Student had brought a weapon to school. School officials believed the report was valid, and contacted the police. Student was searched, and the school building was "locked down" and searched. While no weapon was found in the building, school officials felt Student was responsible and charged her with "threat to the orderly school process" under the student code of conduct. School officials relied on reports from other students who saw Student with a weapon. In addition, when interviewed by school administrators, Student was inconsistent when describing her involvement in the incident.
19. Starting March 9, 2009, Student was suspended out of school with no services. On March 13, 2009, the District conducted a manifestation determination meeting and all required participants attended the meeting, including Parent. The team determined the March 6th weapon incident was not a manifestation of Student's disability. The District continued Student's out-of-school suspension and starting providing homebound instruction on April 3, 2009 for five hours a week.
20. On April 21, 2009, the District's Board of Education expelled Student and assigned her to the Douglass School, a long distance learning program and alternative placement for students with discipline problems. Students receive online instruction while at home through computer-based programs. Special education students also complete their classwork online, and through work assigned by special education teachers. Students are

provided daily feedback concerning their attendance and progress, and given an opportunity to meet with teachers at the Douglass School when needed. According to the District, Student's IEP was implemented in the Douglass School program. At no time did the IEP team convene to determine whether appropriate services could be provided to Student at the Douglass School.

21. Meanwhile, Parent appealed the District's decision to expel Student to the State Board of Education. On May 29, 2009, the District Board rescinded its decision to expel Student. Student was reinstated and permitted to return to the High School.
22. On June 1, 2009, Parent met with the assistant school principal to discuss Student's return to the High School. They decided Student should continue receiving instruction through the computer-based online program since the school year was almost over. On June 2, 2009, Student returned to the High School and received most of her work through the online program until the last day of school on June 10, 2009.

COMPLAINT ALLEGATIONS

The complainant alleges:

- (1) The District denied Student FAPE by failing to address Student's behavior and its impact on her learning;
- (2) Student received no educational services for a period of time following the weapon incident on March 6, 2009;
- (3) Student's disciplinary placement at the Douglass School was not appropriate and denied Student FAPE.

CONCLUSIONS

Provision of FAPE to Student and Student's Behavior

Students with disabilities are entitled to receive a free, appropriate public education. "FAPE" is defined as: "special education and related services that are provided at public expense, under public supervision and direction, and without charge; meeting the standards of [state and federal regulations], include an appropriate preschool, elementary school, or secondary school education in Delaware, and are provided in conformity with an individualized education program (IEP) that meets the requirements of [state and federal law]. See, 14 DE Admin Code § 922.3.0; 34 C.F.R. § 300.17.

An "IEP" is defined in state and federal regulations and specifies the provisions that must be included. For example, an IEP must contain: a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals; a description of how the child's progress toward meeting the annual goals will be measured; a

statement of the special education and related services and supplementary aides and services to be provided to the child; and a statement of any individual accommodations that are necessary to measure the child's performance on State and school wide assessments. *See*, 34 C.F.R. § 300.320; 14 DE Admin Code § 925.20.0.

Student's IEP contains all required provisions. The annual goals, accommodations, and services are based on Student's needs identified through formal and informal evaluations conducted by the District and parent input. The IEP adequately describes Student's needs in the areas of math, reading, and behavior, and includes appropriate accommodations to address each area of need. The District implemented a behavior plan with interventions to support Student, such as the provision of positive reinforcement, regular contact with Parent, and monitoring of Student's behavior. The team further completed a functional behavioral assessment with parent input, and used the results to develop the behavior plan. In sum, the District adopted a program to address Student's behavior and its impact on her learning.

For the reasons stated, I find no violation of state or federal regulations regarding the provision of FAPE to Student concerning her behavioral needs.

No Educational Services Provided to Student from March 9th through April 2nd, 2009

The IDEA requires school districts to apply specific rules and standards when changing the educational placement of a student with a disability for disciplinary reasons. *See*, 34 C.F.R. §§ 300.530 through 536; 14 DE Admin Code §§ 926.30. through 36.0. School officials may remove a child with a disability from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days, and for additional removals of not more than ten consecutive school days in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. *See*, 34 C.F.R. § 300.530(b)(1); 14 DE Admin Code § 926.30.2.1.

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, the school district must provide services during any subsequent days of removal. 34 C.F.R. § 300.530(b)(2); 14 DE Admin Code § 926.30.2.1. The services must enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. *See*, 34 C.F.R. § 300.530(d)(1); 14 DE Admin Code § 926.30.4.1. The services may be provided in an interim alternative educational setting. *See*, 34 C.F.R. 300.530(d)(2); 14 DE Admin Code § 926.30.4.2. And, if the removal is a change of placement, the child's IEP team determines the appropriate services. *See*, 34 C.F.R. 300.530(d)(5); 14 DE Admin Code § 926.30.5.

In this case, Student was removed from her placement for more than ten days in the school year. By the time of the weapon incident on March 6, 2009, Student had already been suspended out-of-school (or "removed from her placement") for ten school days. During any subsequent days of removal in the school year, the District was responsible for providing services. Student was suspended out-of-school for the weapon incident (or "removed from her

placement”) starting March 9, 2009. School officials followed District policy and requested the District office begin providing Student with homebound services. The District approved the request, but Student did not start receiving homebound services until April 3, 2009. Thus, Student did not receive services for nineteen school days between March 9th and April 2nd.

For the reasons stated, I find a violation of 34 C.F.R. § 300.530(b)(2) and 14 DE Admin Code § 30.2.1. regarding the duty to provide services to a child with a disability during any subsequent period of removal beyond ten days in the same school year.

Changing Student’s Placement to the School Program

Under the IDEA, each child with a disability must have a single IEP outlining their educational program and placement. An IEP must be developed and revised in a collaborative manner by a child’s IEP team, including parents and teachers. 34 C.F.R. § 300.320; § 14 DE Admin Code § 925.20.1. This approach allows decisions to be made by the individuals who are most familiar with the child and the child’s specific educational needs. As a general rule, a child’s IEP cannot be revised by school officials unilaterally.

In this case, school administrators changed Student’s placement in December 2008 and assigned her to the School Program. While Student responded favorably to the School Program, the decision to change Student’s placement was not made by the IEP team as required by state and federal regulations.

For the reasons stated, I find a violation of 34 C.F.R. § 300.320 and 14 DE Admin Code § 925.20.1 regarding the requirement the program and placement of a child with a disability be revised collaboratively by the child’s IEP team, and not unilaterally by school officials.

Convening the IEP Team to Determine Appropriate Services in the Interim Alternative Educational Setting

As a general rule, the IDEA permits school districts to change the placement of children with disabilities for disciplinary reasons as long as the behavior is determined not to be a manifestation of the child’s disability. School personnel must then apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. In addition, a child with a disability who is removed from the child’s current placement must continue to receive educational services, as provided in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP. *See*, 34 C.F.R. 300.530(d)(1); 14 DE Admin Code § 926.30.4.1. The services may be provided in an interim alternative educational setting. *See*, 34 C.F.R. § 530(d)(2); 14 DE Admin Code § 926.30.4.2. ***And, if the removal is a change of placement, the child’s IEP team determines the appropriate services.*** *See*, 34 C.F.R. 300.520(d)(5); 14 DE Admin Code § 926.30.4.5. This rule makes sense because the IEP team is most familiar with the child’s educational needs and can assure the child receives appropriate services in the interim alternative education setting.

With regard to Student, the District conducted a manifestation determination meeting on

March 13, 2009. The team applied the correct standards and determined the March 6th weapon incident was not a manifestation of Student's disability. This determination permitted school officials to change Student's placement consistent with the same disciplinary procedures applied to students without disabilities. When Student was expelled by the District Board, and assigned to the Douglass School, the IEP team did not convene to determine the services Student should receive in the interim alternative educational setting.

For the reasons stated, I find a procedural violation of 34 C.F.R. § 300.530(d)(5) and 14 DE Admin Code § 926.30.4.5 regarding the requirement the child's IEP team determine the appropriate services upon a disciplinary removal resulting in a student's change of placement.

The Appropriateness of the Douglass School

Parent alleges Student's disciplinary placement at the Douglass School was not appropriate and denied Student FAPE. As mentioned above, a child with a disability who is removed from the child's current placement for disciplinary reasons must continue to receive educational services, as provided in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. *See*, 34 C.F.R. § 300.530(d)(1); 14 DE Admin Code § 926.30.4.1. The services may be provided in an interim alternative educational setting. *See*, 34 C.F.R. § 300.530(d)(2); 14 DE Admin Code § 926.30.4.

In this case, Student's IEP was implemented at the Douglass School. Student received instruction to permit Student to progress in the general education curriculum and progress toward meeting the goals in her IEP.

For the reasons stated, I find no violation of state or federal regulations regarding the appropriateness of the Douglass School as an interim alternative educational setting.

CORRECTIVE ACTION PLAN

Compensatory Services

1. The District shall provide nineteen (19) instructional hours of one on one compensatory services to Student for each of the nineteen days Student received no services (i.e., from March 9th through April 2nd, 2009).
2. The District may satisfy compensatory service hours through a private tutoring arrangement (if reviewed and approved by the District) or through District personnel providing such services to Student.
3. By **October 15, 2009**, the School shall provide to the Department a schedule which details the manner such compensatory instructional hours will be delivered to Student. The instructional hours should be based on Student's areas of academic need as identified in her IEP.
4. 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.

Staff Training on IDEA Requirements

5. By **September 15, 2009**, the District shall provide written guidance to all school administrators, including principals, assistant principals, and educational diagnosticians, describing the following regulatory requirements:
 - (a) the program and educational placement of children with disabilities must be determined by the child's IEP team and not unilaterally by school officials as outlined in 14 DE Admin Code § 925.20.1; and
 - (b) to the extent District or school officials seek to change the placement of a child with a disability for disciplinary reasons, state and federal regulations must be followed as outlined in 14 DE Admin Code §§ 926.30.0 through 36.0 and 34 C.F.R. §§ 300.530 through 536.
6. By **September 30, 2009**, the District shall provide to the Department a copy of the written guidance disseminated in #5 above with a list of the staff (by title) who received the written guidance, and a description of how and when the written guidance was disseminated. The District shall also advise the Department the method the District will use to ensure that all school administrators have read and understand the written guidance.
7. By **October 15, 2009**, the District shall provide a minimum of a two hour training session to all school administrators and educational diagnosticians on the following regulatory requirements:
 - (a) the program and educational placement of a child with a disability must be

determined by the child's IEP team and not unilaterally by school officials as outlined in 14 DE Admin Code § 925.20.1;

- (b) after a child with a disability has been removed from his or her current educational placement for ten school days or more in the same school year, the District must provide services during any subsequent days of removal. *See*, 14 DE Admin Code § 926.30.2.1; and
- (c) if a child with a disability is removed from his or her placement for disciplinary reasons, and the removal constitutes a change of placement, the child's IEP team must convene and determine the appropriate services the child will receive in the interim alternative educational placement. *See*, 34 C.F.R. § 300.520(d)(5); 14 DE Admin Code § 926.30.4.5. This requirement applies if the interim alternative educational placement is homebound instruction, placement in an alternative school, placement through an intra-District disciplinary program, or other alternative placement.

8. By ***October 20, 2009***, the District shall provide the Department with written confirmation the training described in Paragraph #7 was provided to school administrators and educational diagnosticians, including a list of the staff who attended the training, the date(s) and time(s) the training was provided; a written description summarizing the specific topics discussed at the training, and a description of who provided the training. The District shall also provide the Department with copies of any written material the District distributed to staff in connection with the training described in Paragraph #7. Finally, the District shall establish procedures for evaluating the effectiveness of its training activity, and report the method to the Department, including a description of whether the training was effective and reported as understood by school administrators.

By: _____
Jennifer L. Kline, Esq.
Assigned Investigator
Education Associate

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