

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 13-11 (May 13, 2013)

On March 14, 2013, Student's father filed a complaint with the Delaware Department of Education (DOE) on behalf of Student.¹ The complaint alleges the Appoquinimink School District ("the District") violated certain state and federal regulations with respect to Student. Mediation was offered as a means to resolve the complaint to both parties. Mediation is voluntary on the part of both parties, however; in this case parents had declined the offer.

The complaint has been investigated as required by federal regulations at 34 CFR §§ 300.151 to 300.153 and in accordance with the Department of Education's regulations at 14 DE Admin Code § 923.51.

FINDINGS OF FACT

1. Student is currently 8 years old (d.o.b.2/4/05) and is identified as a student with a disability requiring special education services in the Other Health Impaired (OHI) category. That identification is based on Student's diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD).
2. Student entered the 2nd grade at Elementary School ("the school") in August 2012 with an Individualized Education Program (IEP) developed on April 2, 2012 at the same school that he attended until March 13, 2013.
3. Following the IEP team meeting dated April 2, 2012, the team met on May 2, 2012, August 23, 2012, September 6, 2012, September 27, 2012, November 30, 2012, February 7, 2013, March 27 and 28, 2013.
4. The IEP team discussed, reviewed, and revised the IEP, as needed, at the IEP meetings noted in Finding of Facts #3. Parents were present at each of the meetings except for those meeting held on March 27 and 28, 2013. Copies of the *Procedural Safeguards and Parent Rights Notice* were provided in accordance with the District's policy and consistent with State and federal requirements.

¹ The Final Report identifies some people and places generically, to protect personally identifiable information about the child 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.

There is no allegation that parents had not received nor had been offered copies of *The Notice*.

5. At the start of the 2012-2013 school year, Student was provided with regular transportation service, but because of aggressive and disruptive behaviors (8/29) that resulted in a one day suspension from riding the bus, school officials changed transportation services and special transportation was provided and the IEP was revised to reflect this change. Student's parents were properly notified of this change, and there is no indication that they did not agree with this change.
6. Student has a history of aggressive and disruptive behaviors, and according to Student's parents, that behavior increased significantly during the summer prior to the beginning of the school year. Parents reported to school officials that their observations of the change in Student's behavior prompted them to increase medication that was being taken to help with controlling his behavior. This information was provided at the August 23, 2012 IEP meeting. At that time, Parents also shared with school staff those known "triggers" that could result in aggressive behavior, particularly when "required to participate in an activity not of his choice", and that he functioned best when he was given options.
7. Other revisions were made to the IEP throughout the school year at IEP meetings attended by the Parents. In addition to the change in Transportation services, direct Occupational Therapy (OT) was added to the IEP, as well as group and individual counseling services and adjustments were continually being made to the behavior plan and daily schedule to accommodate Student's behaviors. IEP meeting minutes reflect that parents were continually informed of these revisions and discussions were held to explain that the revisions were being made to maximize Student's opportunity for success, and to assist him in adjusting daily to the school environment.
8. One of the revisions to the daily schedule was the decision to have Student begin each school day in a separate classroom with another teacher rather than starting in the general education classroom which was a more unstructured situation and could be a "trigger." At an IEP team meeting on September 6, 2012, this arrangement was discussed and noted on the team meeting minutes. Parents attended this meeting, and they were aware of the strategy that was being used. The team discussed behavior data results and integrating student back to the regular classroom as soon as possible. Parents reported that they observed some improvement in Student's behavior, which is documented on the meeting notes. Also, a paraprofessional (teacher's aide) was hired to provide additional adult support for Student, and she began during the first week in September.
9. The IEP team reconvened on September 27, and purpose of the meeting is stated; "Review the Functional Behavioral Assessment/Behavior Support Plan (FBA/BSP) and to review and/or revise the IEP." This Plan had been originally revised on May 2, 2012 and again at the September 27 meeting. Target behaviors

were addressed and parents and school staff discussed and collaborated on rewards to be used for positive behavior. Additionally, strategies to be utilized for dangerous and disruptive behaviors were discussed. This included removing Student from the classroom to a quiet room (with adult supervision). Both parents attended the meeting and the minutes reflect a true collaboration between parents and school staff to address a plan to maximize Student's opportunity for school success.

10. A point sheet was developed and implemented that included "smiley faces" which the parent had suggested using at the September 6 meeting. Meeting minutes state that Student is making "great progress" at school and parents also reported that "things are getting better at home and there are not as many defiant behaviors." Additionally, meeting minutes of the September 27, 2012, meeting clearly describes the intervention being utilized and states that [Student] receives "instruction one-on-one in a separate classroom." At this meeting the team also addressed parent concerns regarding handwriting, for which the team agreed to have the Occupational Therapist and the computer specialist work together to determine how best to address the handwriting concern expressed by parent.
11. It was reported to this investigator, that beginning October 2, 2012, Student remained in the general education environment at least 80% of the school day, unless his behavior became so disruptive that it interfered with his learning and the learning of other students in the classroom. At the times that he had to leave the general education environment, Student was removed in order to allow the behaviors to deescalate so that he could be returned to the general education environment. While removed, general education curriculum instruction was provided in a separate environment so that no instruction was missed during those times.
12. While Student was enrolled and attended the school in the 2012-2013 school year (August through March 13), educational and related services were provided by general education teachers, a special education teacher, a para-professional (teacher aide), occupational therapist, school counselor, a behavior interventionist, and additional support provided by a the school psychologist. Also, a consulting counselor from the Providence Corporation was contracted to provide support to the parents in the home, school staff, and Student, and served as a liaison to coordinate strategies to ensure as consistent an approach as possible between the two environments.
13. The IEP team, with the parents in attendance, met again on November 30, 2012. Behavioral progress was discussed and it was noted that Student is "spending most of his day in the classroom" and "[Student] is consistently eating lunch in the lunchroom." Student's parent shared that she has "seen a big change big change since the beginning of the year at home." It was noted that because of the

- less structured nature of recess and Physical Education (PE), Student tended to be less in control of his behaviors and therefore was less able to participate in those activities with other students. School staff agreed to look at other ways to increase Student's time in PE as parent had requested. Additionally, it was at this meeting the direct OT service was added to the IEP as the Student's behavior had improved and his time in the general education classroom had increased so that he could benefit from the service.
14. The IEP team reconvened on February 7, 2013. The stated purpose of the meeting was "Placement." Staff provided an update as to the behavioral progress being made by Student, and parent shared what was going on at home. Student's father expressed concerns with the number of "Code of Conduct violations" and asked the team to create a plan to prevent them from happening, and stated a concern with the school as a placement for Student since he is in "either a large complex classroom or in an isolated classroom." This concern was responded to by the school principal who reported that they are seeing success in the inclusion classroom and did not feel that a change was needed at that time.
 15. At the end of January 2013, school personnel began noticing a significant regression in Student's behaviors. After these behaviors were noted, school personnel contacted parents in early February to discuss this noticeable change in behavior. At that time, parent reported that Student's medication had been changed, and although an increase in anxious and aggressive behaviors were noted at home, they thought it best to continue with the new medication prescribed. The aggressive behaviors appeared to decrease over approximately two weeks, but around March 5, 2013 the aggressive behaviors were again apparent. Incident reports were generated at school on March 5, 6, 7, 12 and 13. Those reports characterize Student's behavior as very aggressive, including destroying property, threatening bodily harm to staff, and physically assaulting staff. Additionally, it was reported that Student became aggressive toward a child in his neighborhood. The last two incidents at school (March 12 and 13) resulted in Out of School suspensions. March 13, 2013 was Student's last day attending school in the District. On or around March 18, parents admitted Student to the Rockford Center, a private psychiatric hospital in Newark, Delaware.
 16. Student shared with school personnel that he was anxious about the family's plan to move, and he was concerned about a new house, new school, and other changes that would occur for him by the family move. Additionally, it was reported that Student stated that he would miss people at his school and did not want to move nor was he looking forward to attending a new school.
 17. On or around March 8, Student's mother reported to Student's special education teacher, via email, that Student's behavior had significantly changed at home. Parent reported that [Student] "appeared more edgy, and more sensitive than usual to noise, closeness to people, and even smells." In addition to the medication change school officials were informed that Nebulizer treatment was given on or

around March 10 and 11, 2013. Following this treatment, school officials saw a noticeable and significant increase in aggressive behavior. Behaviors became so threatening and aggressive toward staff that he was suspended and parent had to be called to remove him from school. On March 13, when mother was at school following the suspension, parent was informed that Student had expressed concerns about moving to school staff and at that time, parent acknowledged for the first time to school personnel that a move was being planned. A few days after the March 13 incident at school, Student was hospitalized at the Rockford Center, and he did not return to the school after March 13, 2013.

18. An IEP team meeting was scheduled for March 28, 2013. The annual review date of the then current IEP was to occur on or before April 1, 2013. Invitations to this meeting were sent to parents on February 8, and 11, 2012. On February 12, 2013, Student's mother notified the school's Educational Diagnostician, via email, that both she and Student's father were able attend the scheduled meeting. On March 27, Student's father notified the Educational Diagnostician, via email at 11:30 AM, that neither parent would be attending the IEP meeting. However, he stated that wanted the meeting to proceed without them, and he expected the team "to review progress and update annual goals." At the same time father expressed concern with progress on specific annual goals because of frequent suspensions and separation from other children that would effect progress on social skills goals and the fine motor goals due to inconsistent implementation by the OT. On the same date, school officials received request to forward a copy of Student's educational record to a school in West Grove, Pennsylvania. The request stated that Student would begin attending that school on April 8, which was to be the first day of school after the Pennsylvania District's spring vacation.
19. After parent's informed school staff on March 27, 2013, that they were not attending the IEP meeting scheduled for March 28, 2013, school staff decided that they could meet on March 27 instead of the scheduled date of March 28. Persons necessary to attend the meeting were available on that date and because the last day of school before spring break was March 28, it was more convenient to meet on that date.
20. On March 27, IEP meeting documents were sent home to parents with Student's sister. Those documents date the meeting as occurring on March 28 and asked parents to sign that they had participated in the meeting. Parent responded, via email, raising concerns regarding the date of the meeting, being asked to sign the forms indicating that they had participated in the meeting, and what had occurred at the meeting.
21. On March 28, 2013, the IEP team reconvened to discuss Student's progress on the annual goals in addition to extending the date of the current IEP to May 30, 2013. This was done in response to parent's email the previous day, and the team believed that extending the then current IEP to May 30, 2013 would provide the

- new school with time to look at data, gather additional data on current goals, and observe Student over two months to assist in determining Student's need and developing an appropriate IEP for Student. Parents were provided with written notice of the meeting including a progress report on the IEP goals. Meeting minutes state that Student "met goals for participating in activities, completing assignments and for writing." The minutes further state, until March 11, 2013, Student was being fully included in the classroom except in the morning during announcements because of the stimulation (in the general classroom). In early March, attempts were made to include Student during the announcements in the morning; however, he had to be removed to the breakout room due to his behavior during that time.
22. School Discipline Incident records report that Student had 23 behavior incidents from the start of the school year to March 13, 2013, his last day at school. These incidents resulted in 3 full day suspensions without educational services, several in school suspensions in which student is in a separate room with school staff, and "detention" where student is separated and removed from the general education environment for short periods of time. Additionally, it is noted that nine (9) of these incidents occurred between January 22 and March 13 during the time that medications were being changed and Student reported being anxious about moving and attending another school. Student's attendance was reported as being present 116 days of 124 school days from the start of school through March 20, 2013, with 3 days of those absences being due to "out of school" suspensions.
 23. "Detention" is used as a consequence for behavior that violates the school's code of conduct, and it is utilized for all students, disabled and non-disabled, whose behavior warrant the consequence strategy. This strategy had been discussed at meetings with parents throughout the school year.
 24. Written IEP progress reports were provided to parents in November, February, and March. The November and February reports were given at the same time as regular report cards and IEP progress was discussed with parents at parent/teacher meetings. The November meeting occurred with Student's mother; the father attended the February meeting, and the March progress report was sent to the parents after the March 28 meeting. Additionally, Student's general progress, particularly regarding behavioral social interactions were discussed at all IEP team meetings and provided to parents through a daily Student Teacher Rating Sheet, which reported Student's behaviors throughout the school day, including reporting the location where education took place period by period. This report was sent home daily, signed by a parent, and returned to school the next day. Suggestions and comments were recorded by parent on the data sheets regularly, and returned to the school, or via email between parents and school staff.
 25. On March 3, 2013 parents notified the contracted Clinical Case Consultant from Providence that the family was planning to move to Pennsylvania and children

would be leaving the District at the end of the school year. Clearly, there was a change in plans after this date, although at the time of the site visit to the school for this investigation (April 15, 2013), Student's sister was still enrolled and attending school in District, Student was no longer enrolled and attending the school.

26. The contracted Clinical Case Consultant first observed Student at the school on September 19, 2012. She continued to provide support to parents and child through March 27, 2013. The treatment goals that were established for Student include: terminate destruction of property, physical aggression, violence or cruelty to people or animals; interact with adults and peers in a respectful manner; improve impulse control; develop positive social skills to maintain peer relations; and to work with parents to successfully use rewards, contingency contracts or token economy system to reinforce desired behaviors and deter negative behaviors. The Clinical Case Consultant, paid for by the District, conducted home visits where she met with Student, parent and sibling, observed and worked with Student at school, met with school staff, teachers and administrators, coordinated care between outside mental health providers and family, developed strategies for teachers and parents to utilize with Student, and provided psycho-social materials to assist parents in understanding anxiety, ADHD and social cognition to Student's family, and identified key mental health service providers where family was moving to assist in a smooth transition.

COMPLAINT ALLEGATIONS

Change in Placement

The complaint alleges the Student's removals from the regular education classroom constituted a change in placement and those removals were in violation of the Student's IEP that states that Student will be educated in the general education classroom at least 80% of the school day.

IEP Documents

On March 27, 2013, the Department of Education received a copy of an email from the complainant to school personnel regarding the documents from the IEP meeting held on March 27. In that email, parent objected to being asked to sign those documents that would indicate that parents attended and participated in the meeting (See Findings of Fact #20 above). Also questioned was the date of *March 28, 2013* as the meeting date when the documents were sent home on *March 27, 2013*. This letter will address that concern, although it does not impact Student's educational program, but would cause the documents to be inaccurate.

CONCLUSIONS

Change in Placement

Title 14 DE Admin Code §925.27.1, in conformance with federal law and regulation, requires that the IEP team determines each child's educational placement in the least restrictive environment and that placement is based on the child's individual needs and services identified on the IEP. Title 14 DE Admin Code §925.20.1.5 states that the IEP must provide "an explanation of the extent, if any, to which the child will not participate with non disabled children in a regular class." This is to ensure that parents of a child with a disability are provided with information regarding the child's placement, and they have the right to disagree with that decision and request a due process hearing should they be unable to agree on that decision.

In this case, as stated in the Findings of Fact, Student's parents were fully aware of Student's program and the strategies that were in place to educate Student in the least restrictive environment. Removals from the general education environment were used consistent with the Positive Behavior Support Plan that was updated on May 2, 2012; revised on September 27, 2012, and adjusted throughout the school year with input from staff, parents, and the Clinical Case Consultant. Data demonstrated that Student had most difficulty during the less structured times of the school day, and therefore removals during those times were in the best interest of the student and maximized his opportunities for success which, in fact, resulted in Student being able to be educated with non disabled peers for the majority of the school day. Other removals occurred only when the school's code of conduct was violated, and student became a danger to himself or others. Other than when student's behavior required "out of school suspensions" all other removals from the classroom did not result in the loss of educational opportunity.

For these reasons, this investigator does not find a violation of the above referenced citations, and based on this, the student has not been denied an appropriate education program in accordance with applicable requirements.

IEP Documents

School officials agree that asking parents to sign documents from the IEP meeting conducted on March 27, 2013, indicating that they participated in the meeting was not appropriate, and the documents should not have been dated March 28, 2013; however, it was not intended to mislead anyone. The school's Educational Diagnostician who is the staff person responsible for the meeting minutes did not have previous experience where parents asked that the meeting be held without them. She was unaware of the appropriate protocol in such situations. This appears to be a reasonable explanation since the minutes state, "[Parents] requested to have meeting held without them." Therefore, while asking

parents to sign as participants at the meeting is not appropriate, it clearly was not done to mislead. Additionally, the forms were pre-dated with the original date of March 28, 2013, and when the team decided to meet on the March 27, 2013 instead of the original meeting date, the date on the forms was not changed.

District personnel acknowledge that requesting parents to sign IEP documents as meeting participants and misdating the document was not appropriate, and they have taken steps to ensure that this does not recur.

CORRECTIVE ACTIONS

The Department is required to ensure corrective actions are taken when violations of the requirements are determined through the complaint investigation process. In this case, no violation was found regarding the allegation concerning changing the student's placement, and school officials have taken steps to address, with appropriate staff, the matter of asking parents sign the IEP documents. Therefore, no further actions are required at this time.

By: /s/ Edward Wulkan
Edward L. Wulkan
Assigned Investigator

Date: May 13, 2013