

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT SOLUTION**

**DE AC 13-7 (filed 2/11/13)
DE AC 13-10 (filed 3/12/13)
DE AC 13-12 (filed 4/2/13)**

On February 11, 2013, March 12, 2013 and April 2, 2013, Parent filed complaints with the Delaware Department of Education on behalf of Student.¹ The complaints allege the Pencader Charter School (“the School”) violated state and federal regulations concerning the provision of a free, appropriate public education to Student (“FAPE”). The complaints have 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 the review of Student’s educational records, related documents provided by parent, as well as on-site interviews with the school principal and the special education coordinator. Interviews were also conducted with Parent by phone.

FINDINGS OF FACT

1. Student is eligible to receive special education and related services under the disability category of “Autism” as outlined in 14 DE Admin Code § 925.6.6.
2. Student is 16 years old and currently a repeating 9th grade student at Pencader Charter School as documented on the IEP and transcript. Student has been attending the School since August 2011.
3. Currently, Student has 11 credits. Student earned 8.5 credits during the 2011-2012 school year and 2.5 during first semester of 2012-2013.
4. A Psycho-educational Evaluation was completed on April 23, 2012 and indicated that the Student requires a high level of support for academics and behavior needs. As recommended, the support should include a one-on-one aide to facilitate functioning in class, a designated person to serve as a link between the Student and teachers, help with organizing and prioritizing work, and interacting positively with other students. The report also indicated that the Student needs the following accommodations and modifications in the classroom: preferential seating, extra time to complete tests and assignments when needed, reminders to keep focused, individual instructions of assignments and tests,

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.

rewording of questions when appropriate, specialized test presentations (such as presenting questions one to a page) when needed, alternate test design (such as converting open-answer questions to multiple choice).

5. A properly noticed IEP meeting was held on November 16, 2011 and an IEP was developed by the team. The Services, Aids and Modifications included: extra personnel support in the classroom, graphic organizers, visual aids, highlighters, notecards, or templates, small group reading instruction with supplementary comprehension materials, tests administered orally when student has difficulty reading tests, modified readings, class assignments and assessments, questioning techniques to assist comprehension and reading organization, stop and verify comprehension at least two times a period, directions rephrased, verbal repetition of material, provide frequent review, provide transition directions during class, small group and/or individual instruction, extended time, use of agenda book, reduce number of items on a task, refocusing, verbal and picture prompting, outlining to assist writing, use of calculator, additional time for completing class assignments, and modeling strategies.

6. On November 15, 2012 school records indicate that the Student demonstrated inappropriate behaviors in school that were both negative and sexual in nature. Disciplinary records specify Inappropriate Behavior: disrespect toward another student.

7. On November 25, 2012 a meeting was held to discuss the disciplinary action as a result of the inappropriate behaviors of November 15th. The conference minutes indicate that the Student is jeopardizing his opportunity to attend the School. It was also stated that a behavior plan will be written by the special education teacher and will be made available at an IEP meeting.

8. A properly noticed IEP meeting was held on November 27, 2012 to discuss recent inappropriate behaviors, conduct a Functional Behavior Assessment, develop a Behavior Support Plan and conduct a review of the IEP. At this meeting the IEP team proposed to extend the IEP until February 15, 2013 in order to gather additional data that will allow the IEP team to make an appropriate placement decision as well as design services that fit Student's needs. As documented on the Prior Written Notice, the IEP team is proposing this action because neither the placement nor current services seem to be appropriate. It states the Student is not making progress toward the IEP goals and new behavioral issues have occurred that need to be addressed immediately.

9. No evidence in the Prior Written Notice indicates that the FBA and BSP took place. However, school records contain a document of a proposed Behavior Intervention Plan. The school records are incomplete as to whether this plan was developed by the team. In addition, the proposed plan did not include replacement behaviors to be taught to Student, did not contain any reinforcement system to reinforce appropriate behaviors demonstrated by the Student nor was there any evidence to indicate it was based on a Functional Behavior Assessment.

10. Prior Written Notice indicates the School has contacted the Delaware Autism Program to assist in the decision making process, the School is also enlisting the assistance of Division of Developmental Disabilities Services and requesting permission to speak with the Student's doctor.
11. On December 10, 2012 school records indicate that the Student engaged in inappropriate behaviors that were again both negative and sexual in nature.
12. A Functional Behavior Assessment was completed on January 18, 2013 which included target behaviors, slow triggers, fast triggers, and a hypothesis. A Behavior Support Plan was developed that same day which included replacement skills to be taught, strengths, antecedent modifications, prompting, compliance procedures, reinforcement system and consequences for target behaviors. The Behavior Support Plan listed people in attendance, which included three teachers, an administrator and a school psychologist. Parent was not in attendance. The school records do not indicate that a Notice of Meeting was sent to parent.
13. An IEP planning meeting was held on February 12, 2013. Parent was in attendance as well as an independent meeting facilitator. Meeting discussion included future goal of graduating with a diploma. Team agreed that in order to support the Student to meet this goal, the next semester would include three academic classes and two "Skills and Strategies" classes with one-on-one aide where he can complete assignments and work on enrichment and extension activities which will strengthen skills.
14. At the February 12, 2013 planning meeting, it was discussed that the Student did not pass Algebra I in the fall semester. The Student passed both marking periods but failed the final exam. It was agreed that the Student would retake the Algebra I final on Thursday, February 21st. A study guide will be developed to prepare the Student for the final exam. It was agreed upon that the study guide will be sent home on February 13th. Parent agreed to seek additional outside help from a math tutor to help Student prepare for final exam.
15. At the February 12, 2013 planning meeting, it was discussed that the Student did not pass Marketing 2 in the fall semester. The Student also failed the final. It was agreed that the Student would not retake the Marketing final and the course will be reflected as a non-credit on the transcript.
16. At the February 12, 2013 planning meeting, it was discussed how communication between home and school would be conducted. It was agreed that a new daily communication form would be utilized. Parent and aide will initial each other's comments. The forms will be contained in the communication book. A weekly progress report will be sent to parent.
17. An IEP meeting was held on February 19, 2013 to develop a new IEP for the Student. School records indicate that parent was sent Notice of Meeting five days in advance of the IEP meeting. The IEP contained goals of reducing off task and inappropriate behaviors by being redirected or prompted to follow a request or to remain on task and by asking or

saying no more than two inappropriate questions or statements (personal and sexual questions) per block to staff or students. An additional goal was developed for intensive educational support by answering questions/prompts correctly on seven out of every ten questions after given a question or prompt. A math goal was developed stating the Student will work through a multi-step problem, taking less than two minutes a step and come to the correct solution.

18. The IEP contained services, aids and modifications of one-on-one paraprofessional support, a behavior plan outlined with positive reinforcements, detailed study guides with answer keys provided two days before scheduled assessments, allowance of two retests if score is below 65%. The tests may be altered but contain same material and format. Student will be allowed to take tests in sections, and tests will be modified to limit the number of short answers and extended responses. Student will have additional time to complete assignments.

19. During the meeting, it was reported by Special Ed Coordinator that the BSP was working, however, since the psychologist was not in attendance, the plan would have to be reviewed at another meeting.

20. On February 21, 2013 Student retook the Algebra I exam and failed it again with a 36. Parent requested that the math department chair grade the exam also. Math department chair graded the exam as a 27.

21. During the interview it was reported by the Special Education Coordinator that the Functional Behavior Assessment and Behavior Support Plan were revised by the school psychologist and provided to the parent at a properly noticed IEP meeting on March 11, 2013 due to additional inappropriate behaviors exhibited by the Student.

22. An IEP meeting was held on April 26, 2013 to add additional accommodations on the IEP and to discuss the BSP. The parent was provided the Notice of Meeting two days in advance. The meeting concluded with the idea that the Special Ed Coordinator will revise the IEP and will send it to parent within 10 days.

23. During initial interviews parent communicated that the Student is not being afforded the accommodations as written on the IEP as he requires extended time for assignments and assessments and retests of assessments that he has not passed. Parent communicated that the School did not provide the Student with extended time due to the fact that they required the Student to take the first semester final exams the week before Exam Week. Parent was also told to keep the Student home during the official Exam Week.

24. During interviews the Special Education Coordinator communicated that the Behavior Support Plan is being followed as written and all accommodations written on the IEP have been provided to the Student including one-on-one adult support.

25. During the interviews, the Special Education Coordinator and Acting Principal also communicated that since the Student needed extra time and support for exams, it was

agreed by both the School and the Parent that the Student would take the exams early, on a different schedule than the general population of the School.

COMPLAINT ALLEGATIONS

Parent claims the School failed to provide Student FAPE by:

1. School prevented Student from attending school during Final Exam Week.
2. School denied Student accommodations included on the IEP relating to extra time for testing and school work.
3. School removed dedicated one-on-one adult support for Student.
4. School personnel recorded inaccurate educational documents including IEP, meeting minutes, and notice of meeting document.

CONCLUSIONS

Issue One: School prevented the Student from attending school during Final Exam Week.

There is no evidence provided in the documentation that the School mandated that the Student miss school during the official exam week. The School reported that both the School and Parent agreed that, since the Student needed extra time and support for exams, the Student would take the exams early, on a different schedule than the general population of the school. It was reported that a special education teacher did a one-on-one review with the Student on Wednesday and Thursday of that week. Student took the Algebra I and Marketing exams on Friday. Given the agreement that the Student needed extra time and support for taking assessments, the agreement by both the School and Parent that the Student could take the exams earlier than the general population, the fact that the faculty will be monitoring exams during Exam Week which are half days of school, and the fact that the student was provided work to complete during the time off from school, I find no violation that the School denied Student a Free and Appropriate Public Education (“FAPE”). State and federal regulations governing the education of children with disabilities require that public agencies receiving assistance under IDEA offer a free, appropriate public education to children with disabilities, including providing special education and related services “in conformity with an individualized education program...” 34 CFR §§ 300.17, 300.320.

Issue Two: School denied the Student accommodations included on the IEP relating to extra time for testing and school work.

There is no evidence provided in the documentation or through interviews that the School has not provided accommodations in accordance with the Student’s IEP. Given Student’s identified needs and accommodations on the IEP such as extra time and extra support for classwork, tests and assignments, the School has provided the Student with one-on-one support through a

paraprofessional. Although there have been times that the School had to change the personnel as the assigned paraprofessional, the School recognizes that the Student requires this level of support throughout the school day in order to be safe and successful. The Student is provided extra time to complete all work, assignments and assessments. The Student is provided study guides two days before all assessments and can retake assessments, if failed. The Student was provided the accommodation for retaking the Algebra I exam on February 21, 2012 and took full advantage of this accommodation. In addition, he was afforded the opportunity to use his notes during the math final. I find no violation that the School denied Student a Free and Appropriate Public Education (“FAPE”) with respect to the implementation of accommodations and supports in Student’s IEP. State and federal regulations governing the education of children with disabilities require that public agencies receiving assistance under IDEA offer a free, appropriate public education to children with disabilities, including providing special education and related services “in conformity with an individualized education program...” 34 CFR §§ 300.17, 300.320.

Issue Three: School removed Student’s dedicated one-on-one adult support.

In accordance with the Student’s IEP of November 16, 2011, the School provided extra personnel support in the classroom. A Psycho-educational Evaluation was completed on April 23, 2012 and indicated that the Student requires a high level of support for academics and behavior needs. As recommended, the support should include a one-on-one aide to facilitate functioning in class, a designated person to serve as a link between the Student and teachers, help with organizing and prioritizing work, and interacting positively with other students. The Student’s IEP of February 19, 2013, states that the Student will have one-on-one support by a paraprofessional. Although there have been times that the School had to change the personnel as the assigned paraprofessional, the School recognizes that the Student requires this level of support throughout the school day in order to be safe and successful. At times when a paraprofessional was not available due to circumstances beyond their control, the School has made adjustments in staff schedules so teachers can provide the one-on-one support.

There is no evidence provided in the documentation or through interviews that the School has not provided the support of a one-on-one paraprofessional in accordance with the Student’s IEP. I find no violation that the School denied Student a Free and Appropriate Public Education (“FAPE”) with respect to the implementation of this service in Student’s IEP. State and federal regulations governing the education of children with disabilities require that public agencies receiving assistance under IDEA offer a free, appropriate public education to children with disabilities, including providing special education and related services “in conformity with an individualized education program...” 34 CFR §§ 300.17, 300.320.

Issue Four: School personnel recorded inaccurate educational documents including IEP, meeting minutes, and notice of meeting document.

A series of non-compliant practices have been documented through this investigation:

1. On November 27, 2012 a properly noticed IEP meeting was held which indicated that a Functional Behavior Assessment will be conducted and Behavior Support Plan

developed. No evidence in the Prior Written Notice indicates that the FBA and BSP took place. However, school records contain a document of a proposed Behavior Intervention Plan. The school records are incomplete as to whether this plan was developed by the team. In addition, the proposed plan did not include replacement behaviors to be taught to Student, did not contain any reinforcement system to reinforce appropriate behaviors demonstrated by the Student nor was there any evidence to indicate it was based on a Functional Behavior Assessment.

2. A Functional Behavior Assessment was completed on January 18, 2013 which included target behaviors, slow triggers, fast triggers, and a hypothesis. A Behavior Support Plan was developed that same day which included replacement skills to be taught, strengths, antecedent modifications, prompting, compliance procedures, reinforcement system and consequences for target behaviors. The Behavior Support Plan listed people in attendance, which included three teachers, an administrator and a school psychologist. Parent was not in attendance. The school records do not indicate that a Notice of Meeting was even sent to parent.
3. An IEP meeting was held on February 19, 2013 to develop a new IEP for the Student. School records indicate that parent was sent Notice of Meeting five day in advance of the IEP meeting.
4. During the interview it was reported by the Special Education Coordinator that the Functional Behavior Assessment and Behavior Support Plan was revised by the school psychologist and provided to the parent at a properly noticed IEP meeting on March 11, 2013 due to additional inappropriate behaviors exhibited by the Student. The IEP team did not take part in revising the Functional Behavior Assessment nor Behavior Support Plan.
5. An IEP meeting was held on April 26, 2013 to add additional accommodations on the IEP and to discuss the BSP. The parent was provided the Notice of Meeting two days in advance. The meeting concluded with the idea that the Special Ed Coordinator will revise the IEP and will send it to parent within 10 days. Parent reports that she still has not received the corrected IEP as of May 8, 2013.

State regulations 14 DE Admin Code §§ 925.22.1.1 require the school district and charter school to notify the parent of the meeting, in writing, no less than 10 school days prior to the IEP Team Meeting (unless mutually agreed otherwise) to ensure that they will have an opportunity to attend.

For reasons stated I found the School to be in violation of 14 DE Admin Code §§ 925.22.1.1. The School did not properly notify Parent of IEP meetings of January 18, 2013, February 19, 2013 and April 26, 2013.

State regulations 14 DE Admin Code §§ 921.1 require specific members for an IEP team. While conducting an IEP meeting where the required members are in attendance, State regulations 14 DE Admin Code §§ 924.2 require the IEP team to consider special factors in the case of a child

whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies, to address that behavior. The notice of meeting for the November 27, 2012 IEP meeting specified that a Functional Behavior Assessment and Behavior Support Plan will be conducted. There is no evidence in documents that an FBA or a BSP was conducted at this meeting. However, there is evidence in the school records of a **proposed** Behavior Support Plan. On January 18, 2013 a Functional Behavior Assessment and Behavior Support Plan were developed. However, Parent was never notified that a meeting was taking place. At the March 11, 2013 IEP meeting, Parent was handed a revised Behavior Support Plan.

Students with disabilities are entitled to receive a free, appropriate public education. "FAPE" is defined as specially designed instruction and related services as required to assist a child with a disability to benefit from an education that is provided a public expense, is individualized to meet the unique needs of the child, provides significant learning to the child, and confers meaningful benefit on the child with a disability that is gauged to the child's potential. **14 Del.C § 3101(5)**. In this case, Student had significant behavioral challenges stemming from his disability that impacted his ability to access his educational program and make meaningful educational progress. Student needed a comprehensive functional behavior assessment and an individualized behavior support plan developed by trained staff who are members of his IEP team. Student's IEP contained only two behavior goals and very few accommodations to address Student's behavior. The School, through the IEP team, did not conduct an appropriate FBA nor develop an appropriate BSP. A behavior support plan developed by the IEP team and trained staff would ensure the interventions are implemented consistently across all settings and allow for data collection to track the effectiveness of the interventions. An individualized behavior support plan would teach Student the interim and long term skills he needs to effectively reduce his inappropriate behaviors.

For reasons stated I found the School to be in violation of 14 DE Admin Code §§ 921.1, 14 DE Admin Code §§ 924.2 and 14 DE Admin Code §§ 925.22. The IEP team, which had excluded the Parent, did not conduct a proper Functional Behavior Assessment and develop a Behavior Support Plan, based on information acquired from the FBA, as required by behaviors that are identified as impeding the learning of Student and others. This action resulted in a denial of FAPE for Student.

Finally, Parent has identified numerous issues of concern since November, 2012. These issues are not IDEA related but are related to strained relations with the School. IEP facilitation has been utilized in recent meetings.

CORRECTIVE ACTIONS

Given the Charter School is in violation of, **14 DE Admin Code §§ 921.1, 14 DE Admin Code §§ 924.2 and 14 DE Admin Code §§ 925.22 the follow corrective action shall apply:**

1. Before the close of the school year, the School shall properly notify Parent of an IEP

meeting, in writing, no less than 10 school days prior to the IEP meeting, unless mutually agreed otherwise. The IEP team will conduct a Functional Behavior Assessment and will develop a Behavior Support Plan based on the information acquired in the FBA.

2. Before the close of the school year, the School shall ensure that all relevant staff are trained on the requirements of notifying parents of IEP meeting, the required members of an IEP team, how to conduct a Functional Behavior Assessment and how to develop an individualized Behavior Support Plan, including, but not limited to the use of appropriate replacement skills, positive reinforcements and strategies to address student behavior.
3. The School shall provide 90 instructional hours of one-on-one instructional services to remedy the denial of FAPE described in this decision. The School may satisfy the compensatory service hours through a private tutoring arrangement or through school personnel providing such services to the Student and the location of services are agreed to by the Parent.
4. By May 31, 2013, the School shall provide to DOE a corrective action report describing how and when the compensatory instructional hours will be delivered to the Student.

Note: Since the School will be closing completely on May 31, 2013, the entire remedy for this situation cannot be completed by the staff within the timeframe of this school year.

By: *Mary Ann Mieczkowski*
Mary Ann Mieczkowski
Investigator
Director, Exceptional Children Resources

Date: May 10, 2013