

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC-14-5 (March 14, 2014)

On January 13, 2014, Parents filed a complaint with the Delaware Department of Education (“Department”) on behalf of Student.¹ The complaint alleges that the Laurel School District (“District”) violated state and federal regulations concerning the provision of a free, appropriate public education (“FAPE”) 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’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records and the documentation provided by Parents. Interviews with school staff and Parents were also conducted.

FINDINGS OF FACT

1. Student is currently sixteen years of age and enrolled in the 10th grade at Laurel High School (“Laurel”). Student is identified with a learning disability and is eligible to receive special education and related services. Student has been attending Laurel since the 2012-2013 school year, which was Student’s 9th grade year.
2. On January 13, 2014, Parents filed this complaint with the Department alleging that the District failed to provide Student with specific services and accommodations outlined in Student’s IEP. During the investigation, Parents clarified that they do not dispute the content of Student’s IEP, nor do they contend the IEP is inappropriate as written. Rather, Parents claim that specific provisions in Student’s IEP are not implemented consistently by Laurel staff.
3. The Department’s investigation is limited to alleged violations that occurred not more than one year prior to the date the complaint was received by the Department. *See*, 34 C.F.R. § 300.153(c). In this case, the complaint was received by the Department on January 13, 2014. As a result, this decision addresses the alleged violations beginning in January 2013.

Background Summary

4. Student is currently enrolled in the 10th grade at Laurel. Student is fully included in the general education classroom for all subjects. There is a special education teacher in Student’s English and math classes. Student also receives support in science and social

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.

studies from special education staff who “push in,” including one teacher who is highly qualified in science. Student’s current schedule and third marking period grades for the 2013-2014 school year are as follows: Study Hall (no grade), SAT Prep (0%), IMP II Math (33%), Ag Structures (no grades yet), DCAS math/Driver’s Ed/Health, English/Language Arts 10 (no grades yet/DCAS testing), Civics/Geography (0%), Biology (36.76%).

5. Student’s Study Hall class is structured to allow Student to retake tests and for goal development in math and reading. Teachers and other staff occasionally “push in” to respond to Student’s questions. However, no consistent daily structured educational program currently occurs in Study Hall.
6. Although Student also receives “push-in” support in science and social studies, no consistent daily structured special education support is offered in those classes.
7. For all three of Student’s educational needs as identified in Student’s IEP in the areas of English/Language Arts and math, Student has made 0% progress toward Student’s second quarter benchmark.
8. Records demonstrate that Student has been tardy, absent, or in In School Suspension (“ISS”) approximately thirty-five times during the 2013-2014. Student’s absences have been characterized as follows: excused absences 46%, unexcused absences 39%, ISS 15%. Student has been placed in ISS for the following disciplinary infractions: tobacco possession and/or use, insubordination, and inappropriate behavior. Student’s last discipline write-up was on December 19, 2013.
9. To date, Student has received five credits toward a high school diploma: English/Language Arts 9, Integrated Algebra and Geometry I, Physical Education, Ag Structures I, and Physical Science. Student obtained the English and math credits in summer school working via computer for credit recovery with individual help. Student has already earned credit for DCAS Math (.25 credits). Student’s Pathway is Ag Structures. The current IEP notes that Student will receive a Diploma with a projected completion date of June 15, 2016.
10. Parents describe Student as shy, quiet, and withdrawn. Parents also note that Student suffers from anxiety issues, including at least one “anxiety attack” at school as reported to them by the school nurse. However, Parents report that Student has lots of friends, is a leader, and is very good “hands-on.” Parents also describe Student as frustrated and not likely to ask for help when needed. Parents report that Student has given up on school. Parents are very involved and supportive of Student in Student’s public education.
11. In September 2013, Student’s IEP team convened a meeting to develop Student’s 10th grade IEP. The team described Student’s strengths as: willing to work hard on things that interest Student (but needs to understand the usefulness of something new in order to put forth full effort), basic mechanical experience and farming experience, honest and

trustworthy, and aware of need for hard work. Student helps with chores at home and helps in Parents' landscaping business as needed.

12. During the IEP meeting, Parents expressed concern about the following issues: Student's ability to take Driver's Education, Student's school-related stress, whether student will complete high school, and whether Student is being "pushed through." Parents also expressed their concern, based upon Student's failing grades and lack of improvement in classes, that Student's IEP was not being followed.
13. Student's current IEP contains goals for math calculation, reading comprehension (informational text), reading comprehension (literary text), written expression, organization, attendance, and behavior. The following needs are identified: organization and frequent reminders to turn in homework assignments and/or major projects, refocusing attention to stay engaged in lesson, supports for attendance and behavior, consistent prompting with verbal and nonverbal cues, praise for participation in activities and completion of assignments. Services, accommodations, and modifications include: increased instructional support, small group assessment, specialized small group instruction, and individualized instruction. Also, use of calculator in math, read/reread directions, shortened assignments – 70% of regular assignment (math and writing), shortened assessments – 70% of regular assessment, extra time to complete assignments – up to double, one opportunity to retake assessments scored below 67%, chunking of writing assignments, not being penalized for grammar/spelling errors in writing, etc. For organization, frequent notebook checks, prompting to turn in assignments, designation of a place in the classroom to leave materials not required to complete homework assignments, prompting to place papers in a binder, meetings with a case manager at least once a month, and meetings with a guidance counselor once a month. An attendance contract is in place, with bi-weekly printout of attendance to Parents. Student is prompted to submit excusal notes.
14. The Functional Behavior Assessment process was begun in October 2013. As part of Student's Behavior Intervention Plan ("BIP"), teachers have been recording quantitative data on Student's academic engagement and passive off-task behavior since December 2013. This has been accomplished by using partial interval recording with a 90-minute sample at 5-minute intervals in the academic setting. The following are part of the BIP: permitted to text mother during allotted time frames, meets with Guidance Counselor two times a month on strategies to overcome anxiety, prompted for focus using intermittent verbal and nonverbal cues, praised for participation in activity, and permitted to go to a specified reward area when behavior goals are met each week. Fidelity checks are conducted by a Laurel School Psychologist.
15. Under Student's 10th grade IEP, Student does not require any related services, such as speech therapy. The school members of the IEP team noted that Student is eligible for extended school year ("ESY") services and recommended ESY for Student. However, the issue was tabled since Parents did not agree at the time of the meeting. The IEP identifies Student's post-secondary goals as being employed as an auto mechanic and living at home. The Division of Vocational Rehabilitation ("DVR") is not yet active with

Student, but school staff have mentioned DVR to Parents as a possible resource, along with Job Corps and the James H. Groves Adult Education Program.

16. On October 14, 2013, a Laurel School Psychologist evaluated Student. The cognitive evaluation yielded the following scores: Verbal Comprehension Index 65, Perceptual Reasoning Index 96, Working Memory Index 74, Perceptual Speed Index 73, resulting in a Full Scale IQ score of 72 (Borderline range). Achievement testing showed Student performing in the low average range in Written Expression (SS 87, G.E. 6.6) and Math Problem Solving (SS 80, G.E. 5.3), with well below average scores in Reading Comprehension (SS 68, G.E. 1.8) and Essay Composition (SS 61, G.E. 3.4). Based upon Student's test scores, the School Psychologist made the following recommendations: high interest reading materials, repeat readings, Cloze technique for reading comprehension, question and answer technique for understanding, retell story to increase reading comprehension, semantic maps for recall, and shortened expressive writing with modified grading.
17. Student received 9th and 10th grade reading and math DCAS scores of "1." Student's STAR reading scores are as follows: September 4, 2012 (G.E. 1.8), September 10, 2012 (G.E. 2.4), May 17, 2013 (G.E. 4.7), May 23, 2013 (G.E. 4.1). And Student's STAR math scores are as follows: August 30, 2012 (G.E. 7.3), May 20, 2013 (G.E. 4.0).
18. On October 24, 2013, the IEP team convened a meeting to complete Student's triennial reevaluation. The team concluded that Student continued to meet the eligibility criteria in the disability category of Learning Disability, and that Student continued to require special education and related services in Student's public school program. Student's areas of eligibility are reading fluency, reading comprehension, math computation, math problem solving, and written expression.
19. Parents actively participated in the development of Student's current IEP and have participated in IEP review team meetings every six weeks.
20. There is a lengthy record of contacts between the Parents and school staff concerning Student's performance. Each of Student's teachers has a copy of Student's IEP and is aware of Student's educational needs. Student's teachers compile a packet of work samples and quantitative data, with a cover letter, every Friday to be picked up by Student's mother every Monday.
21. A School Principal conducts periodic walk-throughs to ensure that Student's IEP is being implemented.

CONCLUSIONS

The appropriateness of Student's IEP is not in dispute. Parents do not challenge the provisions of Student's IEP or Student's educational placement. Rather, Parents claim that Student's IEP has not been implemented consistently by school staff and that, as a result, Student has not made meaningful educational progress.

When evaluating a claim of failure to implement a student's IEP, the Department must determine whether the alleged failure to implement the IEP has deprived the student of an entitlement to FAPE as required by state and federal law. *Ross v. Framingham School Committee*, 44 F. Supp. 2d 104 (D. Mass 1999). When evaluating whether an IEP has appropriately implemented, the following factors become relevant: (1) the failure to implement the IEP must not be a "complete" failure; (2) the variance from the program described in the IEP must not deprive the student of FAPE; and (3) the student must make progress toward IEP goals. *See id.*

In this case, the District has not completely failed to implement Student's IEP. Rather, the District has devoted a substantial amount of educational resources to Student. Student's teachers each have a copy of Student's IEP in the classroom are aware of Student's needs. In addition, a lengthy record documents constant communication with parents, including work samples and quantitative data that Student's teachers collect and provide to Parents on a weekly basis. Finally, the IEP team meets every six weeks to review and revise Student's IEP as needed. While the evidence demonstrates that Student has failed to make much, if any, educational progress, including zero progress towards English/Language Arts and math IEP goals, and low grades in all subject areas, the evidence does not demonstrate a variance from the IEP program as written. Indeed, Student's failure to make progress is at least partially attributable to Student's tardiness and absenteeism, rather than the District's failure to implement Student's IEP. "The unfortunate fact that [Student] did not make progress in certain areas, notwithstanding the services provided to [Student], did not necessarily evidence a denial of FAPE." *L.P. and P.P. v. Longmeadow Public Schools*, 2012 WL 3542581 (D. Mass. Feb. 24, 2012). Here, the evidence demonstrates that services have been delivered in a manner sufficient "to permit [Student] to benefit educationally from [Student's] instruction." *Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist.*, 715 F. Supp. 2d 104, 198 (D. Mass. 1999). Therefore, **I have not identified a violation of Part B of the IDEA or corresponding state regulations resulting in a substantive denial of FAPE to Student.**

RECOMMENDATIONS

The DOE is required to ensure corrective actions are taken when violations of the requirements are identified through the complaint investigation process. *See* 14 DE Admin. Code § 923.51.3.3. In this case, no violation of IDEA was identified. Therefore, "no further action by the DOE shall be taken." 14 DE Admin. Code § 923.51.3.2. However, the IEP team is reminded of its ongoing responsibility to develop an IEP that is "reasonably calculated to enable [Student] to receive educational benefits." *Board of Educ. V. Rowley*, 458 J.S. 176, 206-07 (1982). In Student's case, this may include, among other things, the provision of Extended School Year services.

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