

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

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 11-6 (November 30, 2011)**

On June 24, 2011, Complainant filed a complaint with the Delaware Department of Education on behalf of Student.<sup>1</sup> The complaint alleges the Red Clay Consolidated School District (“the District”) violated state and federal regulations concerning the provision of a free, appropriate public education to Student (“FAPE”).

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.

**FINDINGS OF FACT**

1. During the 2010-2011 school year, Student attended an out-of-state Special Program designed for children with complex disabilities. Student has been attending the Special Program since May 2006 through the District. Student is transported to and from the Special Program on a school van.

2. The District determined Student’s educational needs cannot be met in the regularly offered public schools in the District, and a private placement is warranted to provide FAPE to Student. The District monitors Student’s placement and is responsible for providing FAPE to Student through the Special Program. Even though the Special Program implements Student’s IEP, the District is the public agency responsible for compliance with state and federal regulations regarding Student’s special education program, the provision of procedural safeguards, and placement in the least restrictive environment.

3. Student’s educational needs are extensive. Student has severe cognitive limitations, global delays, very limited language and social development, and adaptive skills in the severely deficient range. Student’s primary disability classification is “Severe Mental Disability” with a secondary classification of “Autism”. Student also has a medical condition and seizure disorder that causes “drop seizures”. Student requires a highly individualized curriculum with specially designed instruction, and does not participate in the general education curriculum. To assist with seizure control, Student is on a restricted diet (i.e., no carbohydrates, sugary foods or drinks).

4. In Delaware, students with disabilities are entitled to receive FAPE until the receipt of a regular high school diploma or until the end of the school year in which the student turns the age of 21. *See*, 14 Del. C. § 3101; § 3120; 14 DE Admin Code § 923.1.2; 34 C.F.R. § 300.101.

---

<sup>1</sup> 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.

Once a student with a disability “ages out” of eligibility for special education services, the student may be eligible for adult level public services.

5. In this case, Student reached the age of 21 on July 27, 2011. She received extended school year services in the Special Program through August 2011. Student has reached the maximum age of eligibility for special education services under the IDEA and Delaware law.

6. The complaint alleges the District failed to provide FAPE to Student as required. As a remedy, Parent seeks compensatory instructional and/or related services from the District.

7. The DOE’s authority is, however, limited to alleged violations that occurred within one year prior to the date the complaint was received by the DOE. *See*, 14 DE Admin Code § 923.53.2.4; 34 C.F.R. § 300.153. In this case, the DOE received the complaint on June 24, 2011 and the investigation is limited to events occurring as of June 24, 2010 and forward.

8. Student’s IEP identifies her individualized need for improvement of skills related to independent living, self help, communication, gross and fine motor, socialization, vocational, and reduction of inappropriate behaviors.

9. Student has a history of exhibiting physical aggression and self-injurious behavior while attending the Special Program. Because Student’s behavior impedes her learning, Student has a positive behavior support plan based on a functional behavior assessment. Student’s IEP also contains goals for decreasing Student’s aggressions and self-injury.

10. Supports and services outlined in Student’s IEP include a Picture Exchange Communication System (“PECs”), use of applied behavioral analysis instructional methods in all educational settings, and a staff to student ratio of 1:1 support. Student requires 1:1 support to ensure her personal safety, to implement her behavior support interventions, and communication system, as well as assist with Student’s personal care needs.

11. Student’s IEP contains 28 annual goals, with short term benchmarks, and related services in transportation, physical, occupational, and speech therapy. The IEP goals focus on increasing Student’s independence level in functional areas and communication. Examples include: following a one-step direction, completing daily hygiene routines (i.e., washing hands, face, and brushing her teeth), using a name stamp, communicating when done with an activity or requesting help, dressing and undressing (i.e, shoes, socks, and shirt), retrieving items from a grocery list, preparing to wash laundry, using the microwave, preparing a salad and cheeseburger, requesting a drink when thirsty, and a snack when hungry.

12. Student’s IEP requires a small classroom setting (no more than 4 other students). She is assigned a primary special education teacher, and assisted by other instructional coordinators throughout the day. According to the Special Program, staff rotate in and out of the classroom to work with Student and others, but at no time is Student paired with another student or left without 1:1 support.

13. Student’s IEP contains post secondary transition goals, and activities and services

designed to assist Student in reaching her goals. Student participated in a number of vocational sites while enrolled in the Special Program. Her most recent vocational site involves a local spa where she performs various tasks, including cleaning and stocking items on shelves. Student's transition goals focus on Student obtaining a part time paid, customized employment position with support, continuing to live with her parents and participate to the maximum extent possibly in her daily living routine, and effectively using PECS at home, work, and in the community to communicate independently.

14. Student's program includes community and recreational outings, such as visits to restaurants, grocery stores, parks, a local aquarium, garden, and zoo. Student works on communication skills, waiting in line appropriately, keeping her hands to herself, maintaining a quiet voice, practicing a purchasing routine, using a fork and spoon, and ordering from a menu. Student's program also involves use of the school apartment to work on daily living skills. In addition, Student visits the vocational center maintained by the Special Program to work on prevocational skills, such as swiffering, packaging, and sorting tasks.

15. The District provides assistive technology for Student's use at home and school to support development of independent living and communication skills, including a computer touch screen, a sock donner, posted pictures of activities (i.e., "Put Em Arounds"), and a tape recorder with a special switch. The District's assistive technology staff also met with Parent and Special Program staff to support Student's use of the assistive devices across settings.

16. Student's primary special education teacher collects data and reports Student's progress on IEP goals. The teacher communicates with Parent through a daily log regarding Student's behaviors throughout the day, her involvement in activities, etc. Parent also reports to the Special Program through the daily communication log and describes any specific behaviors or issues at home, the skills worked on at home, etc. Documentation is often sent to Parent through Student's backpack, including the communication log.

17. As mentioned, Student has a positive behavior support plan ("PBSP") focused on reducing Student's physical aggressions (i.e., hitting, scratching, grabbing, biting, hair pulls, pinching, head butting) and self-injurious behaviors (i.e., head hitting, self-biting, throwing herself to the ground). The PBSP is based on a functional behavior assessment ("FBA") and includes behavior modifications and positive interventions to reduce Student's inappropriate behaviors. Examples include giving clear, concise directions to Student with visual cues, incorporating Student's preferences into her daily schedule, conducting instructional communication sessions with Student at least 3 times a day, and providing opportunities for Student to request preferred items and/or activities. The Special Program implements PECS to assist Student with communication.

18. The PBSP states Student engages in inappropriate behaviors to obtain attention, escape demands or non-preferred activities, and obtain sensory input. Demands occur any time the Student is given a directive, such as "stand up" or "wait". The plan states, in relevant part:

"During the past three years at [the school], [Student] has displayed frequent episodes of self-injury (mostly hand biting and

head hitting) and approximately daily episodes of physical aggression...Often times, it is the demands and environment that elicits behaviors from [Student] and it is the frequency of these demands and environment that will determine the number of behaviors that she will have that particular day. If [Student] is strongly encouraged to complete a non-preferred task, she is likely to engage in aggression to escape or avoid future demands. [Student] often engages in self-injurious behavior when she is frustrated with a demand, redirected from a preferred activity, or when unfamiliar and familiar people say hello to her. [Parent] reports that [Student] may engage in challenging behaviors when young children are in her presence.”

19. Student is also hypersensitive to loud, sudden, high pitched noises in her environment. To desensitize Student to the sounds that trigger behaviors, Student is exposed to a classroom with young children for brief periods each morning. Staff remain and record whether any behaviors occur. The PBSP also requires staff to continuously assess Student’s proximity to children and ensure that adequate space is provided to reduce the volume of the children’s voices. The PBSP further states “wearing headphones may be a good response to a loud environment, especially in the community”.

20. For the 2010-2011 school year, Student’s annual IEP meeting was held on November 10, 2010. The Special Program prepared a draft IEP before the November 10<sup>th</sup> meeting and sent it to Parent for her review. Parent received the draft on or about October 25, 2010.

21. Parent attended the November 10, 2010 IEP meeting, as well as the District’s representative. The team made some revisions to the draft IEP at the meeting, and also reviewed the PBSP.

22. As of mid-December 2010, Parent had not received a finalized copy of the IEP from the November 10<sup>th</sup> meeting. On December 13 and 20, 2010, Parent asked the teacher (through the communication log) for a copy of the IEP. On December 21, 2010, the teacher advised Parent (through the communication log) the IEP had been mailed to Parent on November 22, 2010. Parent responded she did not receive it, and the Special Program sent another copy of the IEP. It was received by Parent in late December 2010/early January 2011.

23. On January 6, 2011, Parent requested a meeting to discuss corrections to Student’s IEP. Parent felt the IEP did not include certain provisions that were discussed and agreed upon at the November 10<sup>th</sup> meeting.

24. On February 3, 2011, an IEP meeting was held. Parent and the District’s representative attended the meeting. The PBSP and the IEP were revised after lengthy discussion. The Special Program also conducted another FBA to address concerns raised by Parent.

25. In March 2011, the Special Program reported the results of the FBA and concluded:

Student engages in self-injurious behaviors to primarily escape from demands. Additionally, Student engages in self-injurious behaviors when the antecedent is unknown (preferred activity with or without the presence of noise) and to gain access to the denied items (i.e., the computer). [Student] engages in aggressions primarily to escape from demands. Secondary functions include gaining access to denied items (i.e., the computer) and transitioning in the presence of noise (which is a type of demand). In regard to noise, [Student] engages in behaviors in both the presence and absence of high pitched noises (classmates, little children, and other high pitched sounds). There are documented instances of the presence of classmate or small child noise, but [Student] did not engage in challenging behaviors. Noise may be an additional trigger for [Student] if she is already agitated, but it is not the sole cause of her behaviors.

26. Parent received a copy of the IEP from the February 3, 2011 IEP meeting and found provisions that she felt were discussed or agreed upon, but revised or omitted from the final draft. Parent also had continuing concerns about Student's behaviors, and the implementation of appropriate interventions.

27. On May 17, 2011, Parent met with the District's representative and reviewed provisions in the IEP to be corrected. The District's representative communicated Parent's concerns to the Special Program. On May 20, 2011, the Special Program re-issued the IEP adopting some of the corrections requested by Parent, but not all. The Special Program rejected some of the revisions requested by Parent as not appropriate for Student, and the District supported the decision.

28. Parent filed this complaint on June 24, 2011.

### ***Complaint Allegations and Conclusions***

29. The complaint contains multiple allegations stated in broad, generalized terms. During the investigation, frequent discussion occurred with Parent to identify the specific facts underlying each allegation and the time frame the alleged events occurred. Many of the individual complaint allegations are tied to the overall claim that provisions in Student's IEP and PBSP were implemented inconsistently or not at all. In reaching its decision, the DOE considered all information and evidence relayed by Parent in writing and during frequent discussion.

30. ***Consistent 1:1 Staff to Student Support.*** The complaint alleges the District failed to provide Student with consistent 1:1 support as required by her IEP. Parent reported specific occasions when she observed Student left standing alone in the classroom allowing Student to wander off, and access inappropriate areas or items, including foods restricted from her diet. Parent described occasions when she observed Student reaching for food left out in the

classroom, and Parent had to block her from eating it. Parent also reports that Student ingested restricted foods while in class and was noticed by an increase in Student's seizure activity.

The District states Student is not left without 1:1 support due to the complexity of her disability and medical needs. Student is accompanied by at least one staff continually throughout the day, and sometimes supported by two staff on community outings.

Staff did observe Student swiping the food of others earlier in the school year. In response, staff were diligent in efforts to block Student, and began using anticipatory prompting and redirection to avoid Student eating restricted food. The District acknowledges the Special Program staff are sometimes pulled from Student's classroom to support other areas, but at no time is Student paired with another student. The Special Program also experiences staff turnover, but the turnover is consistent with the field in general and Student's support level does not change. While the overall staff to student ratio of 1:1 may have fluctuated throughout the day with respect to Student's class in general, Student's 1:1 support level remained consistent. The DOE concludes Student was provided the individualized level of 1:1 staff support required for her reasonable supervision, instructional support, and access to her program. **The DOE finds no violation of state or federal regulations with respect to the level of staff support provided to Student.**

31. ***Staff Training.*** The complaint alleges the District failed to ensure adequately trained staff implement Student's program. The District reports all teachers and instructional coordinators in the Special Program are state-certified in special education and attend regular trainings and professional development in applied behavior analysis and other behavior analysis clinical modules. The Special Program is staffed with a Clinical Coordinator with a national board certification in behavior analysis, and a full-time school psychologist with a Ph. D. and credentialed in behavior analysis. All staff working with Student have received formal PECS training as required by Student's IEP. **The DOE finds no violation of state or federal regulations with respect to the training level of Special Program staff to implement Student's program.**<sup>2</sup>

32. ***Periodic Reports of Progress on IEP Goals.*** The complaint alleges the District failed to ensure that periodic reports of Student's progress on IEP goals were provided. State and federal regulations require the IEP to contain a description of how the child's progress toward meeting annual IEP goals will be measured, and when periodic reports on the progress the child is making will be provided. 14 DE Admin Code § 925.20.1.3; 34 C.F.R. § 300.320(a)(3).

Student's IEP contains the required statement indicating progress will be measured based on "weekly direct observational data" reported through "quarterly progress reports" of July 14, 2010, October 14, 2010, February 11, 2011, May 11, 2011, and August 11, 2011. Parent received the July 14, 2010 progress report on August 4, 2010; the October 14, 2010 progress

---

<sup>2</sup> During the investigation, Parent described an occasion when the speech therapist failed to implement a "correspondence check" when using PECS with Student. This alleged event occurred prior to June 2010 and is outside the timeline of the DOE's investigation. The speech therapist also left the Special Program in the summer of 2010.

report on October 15, 2010; the February 3, 2011 progress report on March 3, 2011; the May 11, 2011 progress report on June 6, 2011; and the August 11, 2011 progress report on September 9, 2011. The dates listed on the IEP refer to the date the period closes for staff to collect observational data. Once the period closes, the data is analyzed, progress reports are prepared, and issued to Parent. Parent received the progress reports for each of the goals within a reasonable time of the data period closing (i.e., 30 days or less). **The DOE finds no violation of state or federal regulations with respect to the provision of periodic reports of progress on IEP goals.**

33. **Monthly Behavior Graphs.** The complaint alleges the District failed to ensure behavior data was provided to Parent on a monthly basis showing the frequency and types of Student's behaviors occurring across settings. Parent requested copies of behavior graphs prepared by the Special Program for Student. The Special Program does not typically provide the graphs to parents, but agreed to for Parent. Student's IEP was also amended to state "a monthly report will be sent home to the parents" with respect to Student's behaviors.<sup>3</sup> Despite the IEP revision, Parent did not receive the behavior graphs each month. Parent received the graphs for January through May 2011 in May 2011. Parent received the behavior graph for June 2011, but not July and August 2011.

Staff recall providing behavior graphs to Parent, but do not have a clear record to determine when the graphs were given. Even if Parent did not receive a graph each month, staff believe she was given a behavior graph that represented each month.

The IEP was revised on November 10, 2010 to require a monthly report be provided to Parent. Based on the revision and discussion at the IEP meeting, Parent expected to receive the graphs each month, and did not. **The DOE finds the statement in the IEP requiring the provision of monthly behavior reports to Parent was not fully implemented.**

34. **Attachments to IEP.** The complaint alleges the District failed to ensure specific documents were attached to Student's IEP, as requested by Parent. The Special Program seeks input from parents when developing an IEP. Parent provided staff a written list of her parental concerns and Student's "likes and dislikes". Parent requested the lists and the PBSP be attached to Student's IEP. When Parent received copies of the IEP, the documents were not attached.

The Special Program intended to attach Parent's lists and the PBSP to Student's IEP. After Parent relayed her concern, the District's representative confirmed with the Special Program the documents are attached to the IEP. Student's IEP contains parental input, positive behavior interventions, and reference to the PBSP as required by the state and federal regulations. 14 DE Admin Code § 925.20.0; 34 C.F.R. § 300.320. **The DOE finds no violation of state or federal regulations with respect to the required content of Student's IEP.**

35. **Concussions to Staff.** The complaint alleges Student's educational records contain inaccurate and misleading information concerning Student. The November 10, 2011 PBSP states that Student has caused "concussions to staff" through head-butting. Parent was not informed of

---

<sup>3</sup> It appears the IEP was amended at the November 10, 2010 IEP meeting to require that monthly behavior graphs be provided to Parent under the behavior goals.

any behavior resulting in concussions, and she was very concerned about the statement in the PBSP, as well as Student's safety and the others involved. Parent asked for specific information, and questioned whether Student was examined by the nurse after each incident. Special Program staff had no additional information. The staff identified four dates the incidents occurred, but had no further record. The notes from the nurse provided no additional clarification.

The District acknowledges the lack of oversight by the Special Program in failing to document each incident and keep Parent informed. The Special Program removed the statement in Student's PBSP referencing head injuries, and agreed Student would be taken to the nurse whenever a head butting incident occurs and Parent would be informed. Given the corrective action addressed, **the DOE finds no violation of a specific state or federal special education regulation.**

36. *Appropriate Behavior Modifications – Demand / Noise.* The complaint alleges the District failed to ensure Student receives appropriate interventions and modifications to address her behavior. Parent contends the Special Program failed to recognize that Student's behaviors are primarily caused by noise from her classmates, young children, and other sudden, high-pitched sounds. As a result, Parent claims the Special Program failed to implement effective interventions and Student's behavior escalated as she was tormented by harmful sounds in the environment. Parent points to lengthy anecdotal evidence and information provided by the Special Program regarding Student's behaviors that is viewed by Parent as contradictory.

Parent described an occasion when she observed Student aggress toward staff while walking on the treadmill in the Gross Motor Room. Parent observed a classmate behind Student make a high pitched sound, and in response to the sound, Parent observed Student immediately aggress. The Special Program reported the aggression as triggered by a demand presented to Student (i.e., the treadmill as a non-preferred activity), rather than the student noise observed by Parent. Parent described other occasions when Student had an aggression, and the Special Program failed to recognize other factors that caused Student to aggress.<sup>4</sup> Parent claims the Special Program is not thoughtful when determining the antecedent to Student's behavior, and hastily jumps to the conclusion it is motivated by a demand.

Parent also relies on multiple comments from Student's classroom teacher (in the communication log) to support that noise from children and peers primarily cause Student to aggress. In the April 13 and 14, 2011 communication log, for example, the teacher reported "[Student] had a lot of SIBs despite a quiet environment and preferred activities". In the March 15, 2011 communication log, the teacher reported "it seems lately that [Student] is mostly effected by her peer noises in our classroom and our neighbors."

In addition, when Parent works with Student in her vocational setting, the community, and at home, she reports few aggressions despite many demands and transitions placed upon Student. Parent also reports occasions when Student aggresses in the community in response to young children, and other times when Student's behavior is appropriate because Parent successfully

---

<sup>4</sup> For example, recent community outings to: McDonald's when Student was sitting at the table with classmates while they enjoyed milkshakes; the zoo when Student heard a parrot; and Old Country Buffet when Student was sitting at the table with her classmates while they ate lunch from the buffet.



blocks Student from the noise through headphones.

The Special Program agrees with Parent that noise triggers aggressive behavior for Student, but typically it is not sole or consistent cause of Student's behaviors. In its recent FBA, the Special Program concluded that Student engages in behaviors primarily to escape from demands and transitions placed upon her, such as directives to "stand up" or "wait" or transition from a preferred to a non-preferred activity. Staff report that demands, including transitions, are most likely to result in a behavior for Student. While noise is also an antecedent for Student's behavior, the combination of noise and demand increases the probability Student will have a behavior.

The Special Program based its hypothesis on several hours of direct observation across settings, including the classroom, vocational and community settings, interviews with staff working with Student, and data analysis by staff trained in behavioral science. When considering an aggression, the Special Program takes into account the activity, the space, the staff present, the students present, any other people present, the temperature of the room, the noise in the room, and other factors in the environment which may be a preferred or non-preferred to Student in assessing the antecedent, the consequence, and overall function of the aggression behavior.

In addressing Parent's complaint, the DOE must determine whether FAPE was provided to Student through her program and placement in the Special Program. **Based on the evidence submitted, the DOE concludes the behavior interventions and modifications in Student's PBSP are based on her unique needs and tailored to address her inappropriate behaviors.** The Special Program reviewed and discussed Parent's concerns, and did not change its hypothesis. The FBA and PBSP are based on lengthy direct observation, data review, and applied behavior analysis. In addition, the Special Program acknowledges noise has always been an issue for Student. To that extent, the comments from the special education teacher do not conflict with the conclusions in the FBA or the PBSP. The PBSP also contains appropriate provisions to desensitize Student to noise to teach her coping skills that will transfer into adult environments. Once transitioned out of her educational program, the District recognizes Student will not be isolated from sound in natural environments.

37. *Use of Headphones.* The complaint alleges the District failed to ensure headphones were used with Student as required by her PBPS. The PBSP states "wearing headphones may be a good response to a loud environment, especially in the community." Each time Parent visited the school to observe Student, she reports the headphones were not used or attempted.<sup>5</sup> Parent saw the headphones in the classroom hanging from the wall, and other times, she did not see the headphones in the classroom at all. Parent reports using the headphones with Student in the community, and having success with keeping the headphones on Student and blocking harmful noises that trigger her behaviors.

The District states the headphones were attempted with Student over several months and

---

<sup>5</sup> During the investigation, Parent reported the dates she observed Student in the Special Program as April 22, 2010, May 10, 2010, August 16, 2010, December 6, 2010, February 10, 2011, February 25, 2011, March 30, 2011 (vocational site), May 2, 2011, May 6, 2011 (Special Olympics), and May 24, 2011.

across settings, but Student became resistant to wearing them. The special education teacher continued to bring the headphones on community outings, but claims she was not able to anticipate noise and resort to the headphones. At some point, the Special Program stopped using the headphones. It appears the staff did not view the headphones as an effective strategy, but deferred to Parent's request to use them. For example, the provision in the PBSP is not obligatory, and states only that headphones "may be" an effective strategy. The staff did not clearly communicate the non-use of the headphones to Parent. When the staff stopped using the headphones, the PBSP should have been amended to remove the provision. However, the evidence supports the conclusion the headphones were not effective for Student in the school environment, and the team's approach to focus on desensitizing Student to noise was appropriate. **Based on the evidence however, the DOE concludes the behavior interventions and modifications in Student's PBSP are based on her unique needs and tailored to address her inappropriate behaviors.**

38. *White Noise.* The complaint also alleges the District failed to ensure white noise was used with Student as stated in the PBSP. At the February 3, 2011 IEP meeting, the Special Program agreed to try "white noise" to block noises from Student that trigger behaviors. The PBSP was amended to state "staff will complete trials with white noise to determine if it will help reduce self injurious and aggressive behaviors in the presence of aversive noise". Parent questions whether white noise was used and asked about it repeatedly.

The communication log from March, April, and May 2011 show Parent asking the special education teacher (through the communication log) whether the white noise was being effective in reducing Student's behaviors. In response, the teacher only reported general comments that white noise was being tried. In response to another inquiry by Parent, the principal informed Parent (through a May 26, 2011 E-mail) "the white noise seems to filter out some of the other student noises and [Student] seems calmer overall when it is used". During the investigation, the school psychologist reported the white noise was used, and it only mildly reduced Student's self-injurious behaviors, but not aggressions.

The communication with Parent regarding the effectiveness of the white noise was not specific and did not occur at regular intervals. However, there is evidence the Special Program trialed the white noise as stated in the PBSP and concluded the effectiveness was minimal. As a result, **the DOE finds no violation of state or federal regulations with respect to implementation of the PBSP requiring that white noise be trialed with Student.**

39. *Edible Reinforcements.* The complaint alleges the District failed to ensure Student was provided with edible reinforcements as required by her PBSP. Each time Parent visited the Special Program to observe Student, she did not see edible reinforcements being used or attempted, other than a limited number of occasions involving toileting.<sup>6</sup>

In contrast, the staff report using edible reinforcements with Student as required by her PBSP in the classroom and community. The PBSP contains a list of foods Student can eat as edible reinforcers, such as raw vegetables, cheese, and black olives. Student is not permitted to eat any items with carbohydrates or sugars due to seizure activity. The staff noted there are

---

<sup>6</sup> The dates of Parent's observation are listed in footnote #5.

occasions when Student would not be interested in the edible reinforcements, and if so, staff used another strategy to provide praise to Student for appropriate behavior or task completion.

During the investigation, the staff provided a detailed account of using edible reinforcements with Student at various points throughout each day. Staff demonstrated knowledge of the PBSP provisions requiring the edible reinforcements. As a result, **the DOE finds no violation of state or federal regulations with respect to implementation of the PBSP requiring that edible reinforcements be used with Student.**

40. *Communication Goal - Snack and Drink Requests.* The complaint alleges the District failed to ensure the implementation of Student's communication goal involving snack and drink requests. As mentioned, the school uses PECS with Student to teach her communication skills across settings and in natural environments. The PBSP requires staff to conduct instructional communication sessions with Student, including during snacks and lunch, and to give opportunities for Student to request preferred items or activities. The team discussed the importance of Student learning how to spontaneously make a drink request at times other than lunch. Student also had difficulty discriminating among traditional icons with pictures and wood backings. The decision was made to try three dimensional icons with Student. At the November 10, 2010 IEP meeting, the communication goal (#6) in Student's IEP was revised to state:

[Student] will independently exchange a 3D locative icon with a communicative partner in the classroom to request a "drink" when she is thirsty (located on the refrigerator door) with 95% independence or request a "snack" when she is hungry with 40% independence over a 3 month period.

The IEP was amended again in February 2011 to specifically state the 3D locative icons would be placed on the refrigerator door in the classroom and kitchen.<sup>7</sup>

Parent claims when she observed Student in the program, she did not see the 3D locative icons for snack and drink on the refrigerators consistently for Student's use. She reports the staff were using just picture icons, rather than the 3D icons noted in the IEP. Parent also claims staff were using the drink request with Student primarily during lunch versus other times in the day to allow a spontaneous drink request to occur.<sup>8</sup> Parent further describes occasions when she saw Student hand over the drink or snack request to staff, and staff turned Student away causing Student's communication attempts to fail.

The Special Program reports that staff did use the snack and drink icons throughout the day. But, the staff also established set snack times, and felt it was appropriate to teach Student when a snack is not available, such as right before lunch. The District acknowledges the Special

---

<sup>7</sup> The revised goal stated as underlined: "[Student]" will independently exchange a 3D locative icon with a communicative partner in the classroom or in the kitchen to request a "drink" when she is thirsty (located on the refrigerator door) with 95% independence or request a "snack" (located on the refrigerator door) when she is hungry with 40% independence over a 3 month period.

<sup>8</sup> Parent identified notes in the communication log from the special education teacher suggesting the drink requests occur primarily during lunch.

Program also had difficulty finding a 3D icon for Student's drink request. In February 2011, Parent provided the staff with a water bottle to use for the 3D drink icon.

During the investigation, staff reported inconsistent implementation of the snack and drink request in comparison to what was required by the IEP. It appears by February 28, 2011, staff were using the 3D locative icons on the refrigerators for snack and drink as stated in the IEP. As a result, **the DOE finds the Student's IEP communication goal for snack and drink requests was not fully implemented between November 10, 2010 and February 28, 2011.**

41. ***Transition Activities and Services.*** The complaint alleges the transition services and activities in Student's IEP are not appropriate to allow Student to reach her post secondary transition goals as required by state and federal regulations. *See*, 14 DE Admin Code § 925.20; 34 C.F.R. § 300.320. Student's 2010-2011 IEP describes Student's post secondary education and training goal as: "Upon completion of high school, Student will participate in job training to improve her works skills for a part time customized employment position." It identifies transition services and activities to enable Student to meet the goal, including Student lengthening her time on task and communicating with staff for assistance when required with a "help" card.

Parent's complaint allegation relates to the removal of the "break" card. The earlier 2009-2010 IEP provided Student with an opportunity to request a break using PECS. Parent feels it is a very important skill for Student to master because she will have supported employment and need to be able to request a break. At the November 10, 2010 IEP meeting, however, the team eliminated the use of the break card and replaced it with the help card. Staff noted Student had only achieved a 14% independence level with communicating "all done", and explained the difficulty for students trying to discriminate between "break" and "all done". The staff decided not to teach both skills to Student at once, and chose to continue to work on "all done" with Student to increase her independence level.

Parent reports a different understanding. She recalls staff specifically telling her the "break" card would be used even though it was being removed from the IEP. When Parent later learned the break card was not being used, she relayed her concern to the staff and District representative.

It is the District's responsibility to ensure Parent is informed of IEP revisions. In this case, Parent was aware of the IEP revision to remove the break card, but references conversation with staff stating the break card would continue. The staff claim they explained to Parent the break card would not be used. The District acknowledges teaching Student how to request a break is an important skill. The District also supports the IEP revision to defer teaching the break request until Student achieves independence in requesting help. Based on the evidence, the DOE concludes the IEP revision was appropriate and based on Student's needs at the time. **The DOE finds no violation of state or federal regulations related to the removal of the break request as a transition activity.**

Parent also alleges the District failed to increase Student's time at her employment site, a local spa, in violation of state and federal regulations regarding secondary transition

requirements. *See*, 14 DE Admin Code § 925.20; 34 C.F.R. § 300.320. Parent claims Student's time in her employment site should be gradually lengthened to increase her stamina given her impending return to Delaware.

The District established an appropriate vocational employment site for Student in her home state to plan a smooth transition to Delaware upon completion of her educational program. Student traveled on the school van from the Special Program to the employment site accompanied by staff. The Special Program observed Student at the site, and decided against increasing her time from 60 minutes to 90 minutes. Staff tried on two occasions to increase her time from 60 to 90 minutes, but observed Student responding unsuccessfully. **Based on the evidence, the DOE concludes Student's IEP contains appropriate services and activities designed to assist Student in reaching her post secondary goals.**

42. ***Revisions to IEP.*** The complaint alleges the District permitted staff to alter Student's IEP to suit the Special Program's needs. The complaint also alleges provisions that were discussed and agreed upon at IEP meetings were either changed or omitted from the final version of the IEP. Parent and staff had lengthy discussion at meetings concerning the IEP and PBSP provisions. The District's representative attended all IEP meetings and noted when IEP revisions were discussed. The Special Program would adopt some provisions requested by Parent, but reject others as not appropriate for Student. Some provisions were agreed upon at IEP meetings, but were inadvertently excluded from the final draft prepared by staff. During the investigation, the DOE found no evidence of the District unilaterally revising Student's IEP or denying Parent the right to participate in the development and revision of Student's IEP. **The DOE finds no violation of state or federal regulations with respect to the development and revision of Student's IEP or the procedural safeguards afforded to Parent.**

43. ***Appropriateness of IEP – Educational Progress.*** The complaint alleges Student has not made meaningful progress under her IEP in the Special Program. Parent contends Student has not mastered a goal to date, and her IEPs contain the same goals year after year with little or no revision. Parent reports that Student has struggled and experienced a significant increase in behaviors since arriving at the Special Program.

Student has significant medical challenges and extensive educational needs. The District acknowledges Student has not made educational progress in leaps and bounds, but Student has a learning style that results in her progress being slow. Progress reports show Student would make gains in some areas, and then regress. The progress reports show fluctuation between progress and regression over time. Based on the evidence submitted, the DOE finds Student's IEP provides an appropriate program to address Student's unique needs related to self help and independent living skills, communication, gross and fine motor skills, socialization, vocational, and behavior skills. The IEP is reasonably calculated to provide Student with meaningful educational benefit. The program provides a highly structured learning environment with a daily schedule of functional academics and communication system. The program provides Student with high levels of consistency and repetition, and services to teach her how to function in community settings and community based job sites. Student's progress was slow and not always steady over time, but it was based on an appropriate program tailored to her needs. **The DOE finds no violation of state or federal regulations related to the appropriateness of Student's**

**IEP.**

44. **Related Services.** As mentioned, Student's program includes occupational therapy, physical therapy, and speech therapy. In 2009, however, the Special Program experienced staff shortage and Student did not receive related services for a series of months. Student's occupational therapy was not provided from March 2009 to June 2009, her speech therapy not provided from February 2009 through June 2009, and her physical therapy from December 2009 to May 2010. The District diligently worked with Parent and the Special Program to calculate the number of hours of compensatory services owed to Student, including a review of school records, progress notes, IEPs, and in some cases, classroom notes. The compensatory services were calculated with Parent's input and provided during Student's program based on one hour of service for one hour of service missed. In the case of an ambiguity or concern relayed by Parent about the quality of the compensatory service, the District often did not count the time provided and construed it in Student's favor. The District's representative regularly conferred with Parent and reviewed records and notes to monitor the compensatory service hours. The compensatory services were completed in August 2011.

However, given Student's extensive educational needs, the consecutive number of months services were not provided, and the significance of related services to her overall program, the DOE concludes she requires additional compensatory services than the hours provided.

**CORRECTIVE ACTION**

To address the denial of services related to Paragraphs 40 and 44:

- A. The District shall provide a total of 50 hours of compensatory services to Student. The services may include a combination of functional life skills, communication, occupational therapy, speech therapy, and/or physical therapy.
- B. Within 30 days of the date of this decision, the District shall confer with Parent to discuss Parent's preferences for the types of compensatory services, and a schedule and manner for delivery.
- C. Within 45 days of the date of this decision, the District shall provide a compensatory service plan, for approval by the Department, describing how and when the compensatory services will be provided to Student as outlined in this decision.

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