

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 13-5 (December 17, 2012)

On October 16, 2012, Student's mother filed a complaint with the Delaware Department of Education on behalf of Student.¹ The complaint alleges the Brandywine School District ("the District") violated certain state and federal regulations with respect to Student.

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 16 years old (d.o.b. 8/1/97) and is identified as a student with a disability requiring special education services in the learning disability category.
2. On July 14, 2011, Student's father registered Student at the High School in the District. The High School is the regular public high school serving the catchment area where Father resides. The registration form submitted to the High School reports Student as living with Father and previously attending A.I. duPont Middle School in the Red Clay Consolidated School District during the 2010-2011 school year. It was also reported that Student had not received special education services, nor did she have an Individualized Education Program ("IEP") or learning problems.
3. Despite her enrollment in July 2011, Student did not attend school in the Brandywine School District. Rather, Student began attending a local charter school in August 2011, and was enrolled by her Mother with whom she then lived.
4. On October 25, 2011, the charter school held an IEP meeting and reviewed Student's prior IEP (dated February 9, 2011) from the Red Clay Consolidated School District. The team determined the IEP was appropriate and continued to

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.

implement it.

5. Student was withdrawn from the charter school by Father on February 22, 2012. Father notified the charter school that Student was residing with him, and would be transferring to the High School in the District.
6. On March 5, 2012, Father (again) registered Student to attend the High School in the catchment area where Student was then residing with Father, as well as grandmother. Father also signed a consent on the same date authorizing the charter school to release Student's educational records and forward them to the High School, to include Student's IEP.
7. When registering Student at the High School, Father reported that Student had no physical limitations or learning problems. It was reported that Student had an IEP, but there was no indication Student had received special education services. The High School had the prior registration information from July 2011 indicating Student had no IEP.
8. The High School developed a class schedule for Student, and Student began attending on March 6, 2012. However, no special education services were anticipated for Student.
9. There is a notation in Student's educational record dated March 15, 2012 stating the records from the charter school were received by the High School, including Student's IEP from the charter school. The "end date" on the IEP was February 8, 2012.
10. The High School did not convene an IEP team meeting to review the IEP when it was received. Rather, the educational diagnostician adjusted Student's class schedule to ensure each academic class Student was taking was co-taught by a special education and general education teacher. The educational diagnostician also received prior evaluations of Student.
11. The High School convened an IEP team meeting on May 31, 2012. Student and her parents attended. The team reviewed prior evaluations of Student, as well as informal evaluations, teacher observations, and transition surveys.
12. Teachers reported that Student had difficulty performing in class since she arrived at the High School in March 2012. The team developed an IEP for less than one year at Father's request to ensure it would be reviewed more frequently to meet Student's needs.
13. The IEP team determined Student would have to repeat 9th grade. The retention decision was based upon her performance at both the charter school and High School during the 2011-2012 school year. The team noted Student reported difficulty transitioning from the charter school to the high school when the third

- marking period began. The team stated, "it would be good to look at it as a fresh start" [for Student], since Student reported it was a difficult transition from her previous school."
14. In developing Student's IEP, the team drafted a transition plan focused on Student's interest in becoming a registered nurse. Goals were developed to assist Student to complete work assignments, and assist with "math computation and reasoning. The team determined Student was not eligible for extended school year ("ESY") services, nor did she require positive behavior interventions and supports. Student's placement was designated as the regular education setting with her non-disabled peers throughout the day.
 15. In July 2012, however, Father notified school officials Student was again returning to live with Mother (Complainant), and, would be withdrawing from the High School. On July 31, 2012, the official *Withdrawal-Transfer Form* was completed and signed by Father.
 16. In mid-September 2012, it was reported to school officials that Student returned to Father's residence. On September 19, 2012, Student was reenrolled in the High School. Upon her return, the High School provided special education services to Student under the program and placement outlined in the May 31, 2012 IEP.
 17. On November 9, 2012, the IEP team convened. Student and her parents attended. The team discussed specific revisions to the IEP to assist Student's academic progress. Mother reported that Student had received speech services until the 7th grade, and since then, a decline in her performance was noted. School staff explained Student's language skills could be reevaluated to determine if additional services are needed. The team also discussed additional goals and supports for Student, to include an organizational system to assist Student in completing assignments. The team agreed Student's special education teacher would draft a revised IEP, disseminate it to the team, and schedule another team meeting to review and finalize it.
 18. The High School scheduled the next IEP team meeting for November 26, 2012.
 19. On November 13, 2012, Mother filed this complaint with the Department of Education.
 20. On November 15, 2012, Father submitted the *Withdrawal-Transfer Form* to the High School stating Student would be home-schooled. The form identified the location of the home school as Mother's residence.

COMPLAINT ALLEGATIONS

The complaint alleges:

- (1) The District failed to provide special education and related services to Student when she transferred from the charter school to the High in March 2012; and
- (2) The District failed to consider Student's need for positive behavioral interventions and accommodations.

CONCLUSIONS

Student's Transfer from the Charter School to the High School

State and federal regulations address the requirement for providing special education services to students transferring from one public school to another public school in Delaware.

“A child who transfers from one Delaware public agency to another shall temporarily placed in an educational setting which appears to be most suited to the child’s needs based on a mutual agreement of the parents and the receiving public agency. This agreement shall be documented by the signatures of the parent and the receiving public agency on a temporary placement form or the cover page of the IEP. Within 60 days of the child’s initial attendance in the receiving public agency, the receiving public agency must either: Adopt the child’s IEP from the previous public agency at an IEP meeting convened for that purpose, or develop, adopt, and implement a new IEP that meets the applicable requirements...” 14 DE Admin Code §925.23.4 and 34 C.F.R. §300.323(e)

In this case, Student transferred from the charter to the High School on March 6, 2012. The High School received Student's IEP on March 15, 2012. Upon receipt of the IEP, the High School was required to review the IEP and place Student in a educational setting that appeared most suited to Student's needs based upon a mutual agreement with Student's parent. The agreement must also be documented.

The High School did not comply with all the required provisions of this regulation. Rather, school staff revised Student's schedule upon receipt of the IEP to ensure Student was assigned to classes co-taught by a general education and special education teacher. But there is no evidence Student received the individualized special education support that her transfer IEP required. The IEP required Student be removed from the general education classes to receive special education instruction in small groups two times a week for 47 minutes per session to assist her in “understanding and following multi-step directions” and two times a week for 15 minutes to work on content vocabulary development. There is also no record that Father agreed to the temporary placement and program offered by the High School which differed from the program outlined in Student's transfer IEP.

In addition, the High School did not convene an IEP team to review Student's transfer IEP until May 31, 2012, or past the 60 day timeline requirement.

For the reasons stated, I find a violation of 14 DE Admin Code § 925.23.4 and 34 C.F.R. § 300.323(e).

Consideration of Positive Behavior Interventions and Accommodations

State and federal regulations require the IEP team to consider appropriate "positive behavioral interventions and supports and other strategies for the child...". 14 DE Admin Code §925.24.2.1; 34 C.F.R. §300.324(a)(3)(i).

In this case, the IEP team at the High School reviewed and revised Student's IEP on two occasions. On May 31, 2012, the team considered Student's needs for positive behavioral interventions, supports, and strategies. Based on information and various data sources collected, the team agreed that such interventions were not necessary.

On November 9, 2012, the IEP team met again to review and revise, if necessary, Student's IEP. At the meeting, Mother suggested several strategies that were reported to be successful previously with Student. The team agreed to develop a "progress sheet" to be utilized to track and record specific positive classroom behaviors. Also, the team discussed incorporating a goal to help Student keep track of her materials and assignments and agreed to consider a language evaluation in order to determine whether the service was needed to provide FAPE to Student.

For the reasons stated, I find no violation of 14 DE Admin Code § 925.24.2.1 and 34 C.F.R. § 300.324(a)(3)(i).

CORRECTIVE ACTIONS

The District must take the following corrective actions:

1. ***Student Specific Corrective Actions:***

As noted in the findings of fact, there is no evidence to indicate that Father and the High School agreed on a temporary placement in the manner required by the regulation. In addition, Student's IEP was not reviewed within the 60 day timeline required by the regulation. While the High School provided Student with educational services in a co-taught classroom, the IEP also required her to be removed from the general education classes to receive special education instruction in small groups throughout the week to assist her in "understanding and following multi-step directions" and to work on content vocabulary development. These services were not provided.

The District must develop a compensatory education plan to remedy the denial of appropriate services to Student during the time period of March 16, 2012 to May 31, 2012. In doing so, the District can take into account the provision of services that were provided in the co-taught setting during this time frame.

The District shall submit a proposed compensatory education plan to the Department on or before February 20, 2013 for approval. At the same time, the

District shall provide a copy of the proposed plan to Parent.

2. ***Other Corrective Actions Required:***

Federal regulations, specifically, 34 CFR §300.151(b)(2), requires the State, under its general supervisory authority to address “*appropriate future provision of services for all children with disabilities.*”

In addition, the District must outline the steps that will be taken to ensure the regulatory violations identified in this decision do not occur with other students with disabilities who may transfer from other public agencies to the District.

The District shall provide the Department with a written report documenting these steps on or before February 20, 2013.

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

Date: December 17, 2012