

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 13-8 (March 15, 2013)

On February 11, 2013, Student's mother filed a complaint with the Delaware Department of Education on behalf of Student.¹ The complaint alleges the public charter school, Gateway Lab School ("the School"), 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 11 years old (d.o.b. 5/11/01) and is identified as a student with a disability requiring special education services in the learning disability category.
2. After attending parochial school from kindergarten through 5th grade, Student began the School at the beginning of the 2012-2013 school year. It is noted that prior to attending the School, the student had not attended a public school.
3. In March 2008, while enrolled and attending the Parochial School, parent had Student evaluated at the Nemours Children's Clinic. The evaluation confirmed a previous diagnosis of "Attention Deficit/Hyperactivity Disorder (ADHD) inattentive type." It was noted that academic and organization problems were evident at that time. The evaluator offered several educational recommendations to address problems with reading speed and fluency.
4. While attending the Parochial School it was reported that the student had received "Resource Room" and Title I services to address the effects of the ADHD on Student's performance.
5. At the end of the 2010-2011, while in 4th grade, Student was referred to the Christiana School District ("the District") by parent and the parochial school for a

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.

- psychoeducational evaluation due to academic concerns and inconsistent performance. A battery of assessment instruments was used in evaluating Student. These included the Wide Range Intelligence Test, the Kaufman Test of Educational Achievement, Second Edition, the Conners' Third Edition Teacher Rating Scale, educational record review, classroom observation and interviews with parent, teacher, and student.
6. On June 9, 2011, an IEP team met to review the results of the assessments and determine whether the student had a disability and was eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) and accompanying Delaware State regulations.
 7. The team determined that Student was disabled (Other Health Impaired) under the IDEA as a result of the impact of the ADHD on academic performance, and they proposed developing an IEP for Student. Parent elected to reenroll Student at the Parochial School for the 2011-2012 school year. Therefore, an IEP was not developed nor were special education services provided.
 8. In the Fall of 2011, parent began looking for another school to enroll Student for the 2012-2013 school year where Student could receive services to meet her educational needs. The School at which Student was eventually accepted and attended was contacted in November 2011. School staff requested that parent have a "Teacher Evaluation of Student Strengths and Needs" form completed and returned to the School. This form is, in part, used to notify student's current school of enrollment as notification of interest to enroll in the School.
 9. Staff at Student's school of enrollment completed the form. The form was signed on December 7, 2011, and it was submitted to the School on December 8, 2011. The form addresses Student's strengths, weaknesses and specific goals in the areas of Math Skills, Reading Skills, Written Language Skills, and Behavior and Social Skills.
 10. In May 2012, Student was accepted at the School, and she was to begin attending at the start of the 2012-2013 school year. At that time, all parties agreed that previous assessments (Nemours Children's Clinic, March 2008 and Christina School District, June 2011) were to be provided to school personnel. Those assessments identified Student as a child with a disability and the most recent assessment completed by the School District determined that Student was eligible for special education services.
 11. It was reported that School officials said that another assessment would be conducted early in the school year. Parent signed the consent to evaluate form and dated it October 25, 2012. The School Psychologist completed a psychoeducational assessment on November 8, 2012.

12. Parent was invited to attend a meeting, scheduled for January 30, 2013, in order to review the assessment results, determine eligibility for special education/related services, and develop an IEP, as appropriate.
13. The team met on January 30, 2013 and Student's mother was in attendance. The team reconfirmed the determination made in 2011 by the Christina School District i.e. Student was a student with a disability requiring special education services to address the impact of the disability on her educational performance. Prior written notice was provided. An IEP was developed. IEP forms were completed and sent home to parent for review and approval. Approval of the program was given by parent and signed and dated February 11, 2013.

COMPLAINT ALLEGATIONS

The complaint alleges the School failed to provide a free appropriate public education (FAPE) within a reasonable time after Student enrolled in the School and in accordance with the requirements. Specifically, special education services were not provided within proper timelines after the student transferred from the parochial school and began attending the public charter school on August 29, 2012.

CONCLUSION

State and federal regulations address the requirement for providing special education services to children with disabilities at the beginning of the school year. Specifically, 14 DE Admin Code §925.23.1 states, "*At the beginning of each school year, each public agency shall have in effect, for each child with a disability within its jurisdiction, an IEP...*" (34 CFR §300.323)

In this case, there is no dispute that Parent informed staff from the Public Charter School that Student had been evaluated and identified as a child with a disability. In fact, parent provided copies of the evaluations that had been completed in March 2008 and May 2011 prior to the Student being accepted at the School. The student was not reevaluated until November 8, 2012 (more than 2 months after the start of school), and did not have an IEP until January 30, 2013. Therefore, special education services were not provided to Student from August 29, 2012, until after January 30, 2013, more than 5 months after Student began attending the School. Such a lengthy delay is a procedural flaw that constitutes a deprivation of a student's FAPE as it "compromise[s] the pupil's right to an appropriate education, seriously hamper[s] the parents' opportunity to participate in the formulation process, or cause[s] a deprivation of educational benefits." *Corey H. ex rel. B.H. v. Cape Henlopen School Dist.*, 286 F.Supp.2d 380, 385 (D.Del. 2003).

For the reasons stated, I find a violation of 14 DE Admin Code § 925.23.1.

ADDITIONAL CLARIFICATION

Current law and regulation addresses procedures to follow when a child with a disability transfers from one public agency to another public agency within the same state; however, neither State nor federal law or regulation specifically address the procedures required when a parentally placed private school student with a disability transfers to a public school within the same state. Therefore, I will try to provide additional clarification and suggestions as to what the School could have done to meet the intent of the law.

A fact in this case that makes the matter somewhat confusing is that while Student was identified as a child with a disability under IDEA by a public agency, an IEP was **not** in place. At the time Student was identified, she was enrolled in a parochial school and Parent chose to have Student remain at that school. As a student placed by parent in a private or parochial school she had no right to receive a free appropriate public education.

However, once the identified student is enrolled in a public school, including a charter school, the obligation to meet all special education requirements falls to the Charter School. In order to meet the requirements of applicable law (14 DE Admin Code § 925.23.1), the Charter School could have taken one of the following steps at the time Student was accepted to attend the school:

- 1) Prior to the start of the school year, IEP team could have met and developed an IEP for the student based upon the evaluation data available and, with parents' approval, have that IEP in effect on the 1st day of school;
- 2) Have the IEP team meet and develop an "interim" IEP to be implemented on the first day of the school year, with parents' approval, until new assessments could be completed, and a permanent IEP developed based on the new evaluation information. The assessments and final IEP should be completed a reasonable time after the start of the school year, e.g. 60 calendar days or a different time agreeable to Parent; or,
- 3) Have new assessments completed during the summer; meet with the Parent and finalize the IEP prior to the start of the school year, and have it in effect on August 29, 2012.

CORRECTIVE ACTIONS

The School must take the following corrective actions:

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

The School must develop a compensatory education plan to remedy the denial of

appropriate services to Student from August 29, 2012 until the IEP developed on January 30, 2013 was in effect. If parent and School cannot agree on the appropriate compensatory services, the parties may try to resolve the disagreement through mediation and, if unable to resolve it through mediation, Parent has the right to request a due process hearing.

The School shall submit any proposed compensatory education plan to the Department on or before April 30, 2013 for approval. At the same time, the School 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 School must outline the steps that will be taken to ensure the regulatory violation identified in this decision does not occur with other similarly situated students with disabilities.

The School shall provide the Department with a written report documenting these steps on or before May 15, 2013.

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

Date: March 15, 2013