

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

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 07-04  
(May 15, 2007)**

On January 3, 2007, Parent filed a complaint with the Delaware Department of Education on behalf of his child (“Student”).<sup>1</sup> The complaint alleges that the Red Clay Consolidated School District (“District”) violated state and federal laws relating to children with disabilities. Parent’s complaint alleges some six violations of federal law and regulations arising from meetings held in November and December 2006 to develop Student’s individualized education program (“IEP”). During this investigation, Parent added an allegation arising from the scheduling of an IEP meeting in January 2007.

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 and procedures, including Sections 15.12 to 15.14 of the *Administrative Manual for Special Education Services* (“AMSES”).<sup>2</sup> Specifically, the investigation included interviews with the principal of the program Student attends (“Principal”) and with

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<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.

<sup>2</sup> Congress reauthorized the IDEA in 2004. Most of the provisions of the *Individuals with Disabilities Education Improvement Act of 2004* became effective on July 1, 2005 and new federal implementing regulations became effective on October 13, 2006. The DOE is in the process of revising its state special education regulations, contained in the AMSES, in response to the federal reauthorization. The events pertinent to the resolution of this investigation occurred shortly after the effective date of the federal regulatory changes. In addition, some of the statutory and regulatory changes and proposals affect the provisions pertinent to this investigation. Accordingly, for ease of reference, citations in the Report are to *the Improvement Act* and to the newly effective federal regulations.

Parent. The investigation also included a site visit to Student's current school and a review of Student's educational records, including Student's IEP, evaluation and assessment reports, meeting minutes and correspondence between Principal and Parent.

### **FINDINGS OF FACT**

1. Student is in the 5<sup>th</sup> grade and attends elementary school ("Elementary School") within the District.
2. Student is eligible for special education and related services because of disability-related education needs. Student has severe cognitive delays, as well as delays in communication, fine motor and self help skills. Student also has a seizure disorder and visual and orthopedic impairments, and has significant behavioral needs, including self-injurious behaviors and resistance to changes in routine.
3. Elementary School is not Student's home school. Given the nature of Student's needs, Student's education program is administered through a Special Program run by the District. All elementary students served by the Special Program attend classes, and receive their special instruction, therapies and other services, at Elementary School even if Elementary School is not their home school.

#### ***Recent Evaluations***

4. Parent requested the District re-evaluate Student's educational needs in the spring of 2006.
5. A District psychologist conducted a psychological assessment of Student on June 1, 2006. The assessment report concluded that Student continued to need intensive instruction in a small and highly structured classroom setting. It recommended the continued use of assistive technology to augment communication at home and school and suggested broad communication and behavioral strategies to address behavioral challenges in the home.
6. Parent requested, and District provided, an independent educational evaluation ("IEE") of Student. The IEE report was shared with Parent and District in October 2006.
7. The IEE report recommended specially designed instruction for Student that included, among other items, multidisciplinary involvement; a curriculum with a preliminary sensorimotor stimulation; facilitative communication devices; carefully planned and implemented instruction; highly skilled staff "well versed" in teaching functional communication skills to non-verbal learners; and staff trained to safely manage Student's negative behaviors.
8. The IEE report concluded that Student required a highly-structured educational environment; the opportunity for recreational activities; training in self-care and daily living skills; positive behavior intervention planning; intensive social skills training; medication management; and intensive educational intervention to improve functional daily living skills.
9. The IEE did not recommend a specific classroom size or teaching ratios. It does observe that "it is difficult to imagine how [Student] could participate meaningfully in a general education program or benefit instructionally from a regular education curriculum."

### ***IEP Meetings***

10. Student's IEP team met on November 10 and 22, and December 5, 2006 to consider the IEE report and to make any necessary revisions to Student's IEP.
11. The IEP meetings were run by a trained facilitator not employed by the District. Parent provided District with a detailed list of requests for discussion at the meetings.
12. None of Student's regular education teachers attended any of the three IEP meetings.

### ***Content and Delivery of IEP***

13. The IEP finalized at the December 5, 2006 meeting explains that Student "participates in a functional life skills program in an integrated setting" and that Student is "unable to meet the general education criteria due to [Student's] physical and cognitive needs."
14. The IEP offers Student 30 hours per week of special education services in English language arts, math, science, social studies, homeroom/study period and related arts (music, art, physical education, etc.).
15. Under the IEP, Student receives some special education and related services in a self-contained special education classroom and some services in a regular education classroom. Student participates in a functional life skills program in both setting and the special education classroom and the regular education classroom are located close to each other. In total, Student is served outside the regular education classroom more than 60% of the day.
16. Student's special education classroom is staffed by one special education teacher and three paraprofessionals. Six other students are also assigned to the classroom. Because of the nature of the students' individual programs, all seven students are seldom in the special education classroom together.
17. Student's IEP provides that Student receives special education services in a general education classroom for homeroom, English Language Arts and unified related arts (music, art, physical education, etc.). Student also attends recess with regular education students. Student and one other Special Program classmate are accompanied by either their special education teacher, a paraprofessional or a related services provider when Student is outside the special education classroom. The IEP specifies that paraprofessional support will be provided at a 1:2 ratio.
18. The IEP also includes several related services, including occupational therapy, physical therapy, communication therapy, adaptive physical education and specialized transportation services.
19. Finally, the IEP also includes a "Student Activity Supplement." The Supplement describes additional supports, services, modifications, accommodations and protocols for Student's education. Among other things, the Supplement includes behavior management techniques and communication activities and techniques.

### ***Parent disagreement with IEP***

20. Principal believed that the IEP team had finalized the development of the IEP and discussed and addressed all of Parent's concerns and requests by the conclusion of the December 5, 2006 meeting. Parent took the IEP home to review and consider.
21. Parent returned the IEP to school on approximately December 7, 2006 indicating that he disagreed with both the program and placement reflected in the IEP.

- District provided written notice to Parent of its intent to implement the IEP as developed during the November and December meetings.
22. On January 5, 2007, shortly after this complaint investigation was initiated, Parent received notice of another IEP meeting that the District had scheduled for January 11, 2007. District acknowledges that Parent was not provided adequate notice of the January 11, 2007 meeting.

## CONCLUSIONS

Parents' letter of complaint generally focuses on the content of the December 2006 IEP or the procedures used to develop it. The IEP prepared for Student follows the IEP form developed and required by the Delaware Department of Education. (See AMSES Section 5.4.1.)

### ***Issues 1 and 2: Involvement and progress in general education curriculum and measurable annual academic goals.***

Parent is concerned that Student's IEP does not include "a statement of the child's present levels of academic achievement and functional performance, including...how the child's disability affects the child's involvement and progress in the general education curriculum." Parent also believes that the IEP does not include "measurable annual goals," particularly academic goals, designed to meet Student's disability-related needs so that Student can be involved in and make progress in the general education curriculum. (See 20 USC 1415(d)(1)(A)(i)(II)(aa) and 20 USC §1415(d)(1)(A)(i)(I)(aa)). The general education curriculum is the curriculum provided to nondisabled students. (34 CFR §300.320(a)(1)(i)).

"Academic achievement" generally refers to a child's performance in academic areas (e.g., reading or language arts, math, science, and history," but the meaning may change based on a child's circumstances. (Federal Register Vol. 71, No. 156, page 46662, *Analysis of Comments and Changes* by Office of Special Education and Rehabilitative Services, United States Department of Education, August 14, 2006). "Functional" skills are nonacademic skills or activities often related to routine activities of everyday living. (2004 *Analysis of Comments and Changes*, page 46661).

IDEA does not require that IEPs contain specific goals for each specific discipline and or to contain present levels of performance on specific assessment instruments. Instead, a student's present level of performance is typically linked to IEP goals or objectives, which in turn must be based on the child's involvement in the general education curriculum (2004 *Analysis of Comments and Changes*, page 46662).

Here, page 10 of Student's IEP explains that Student participates in a functional life skills program and that Student is not able to meet the general education criteria. On Appendix F of the IEP, required team members, including Parent, agreed that Student requires extensive modifications to access the general curriculum and the Delaware

Content Standards. These conclusions are consistent with both the District's own psychological assessment and with the IEE report. They also fulfill the regulatory requirement that Student's IEP state how Student's disability affects Student's involvement and progress in the general curriculum, namely, that Student requires a functionally based curriculum because Student is not able to meet general education requirements.

In addition, Student's IEP contains present levels of performance for a variety of functional skills related to Student's IEP goals and objectives (for example, Student's present ability to use a voice output device for communication and to use a symbol-based daily schedule). It also contains Student's present levels of performance for objectives that, given Student's disability-related needs, are more academic (for example, using a name stamp to mark papers).

Student's IEP meets the requirements of 20 USC §1415(d)(1)(A)(i)(I)(aa) and 20 USC §1415(d)(1)(A)(i)(I)(aa)).

***Issue 3: Participation with typical peers in the regular education classroom.***

The IEP must also explain the extent to which the student will not participate with nondisabled children in regular classes and in related services, supplemental aids and services and program modifications and supports. (See 20 USC 1415(d)(1)(A)(i)(V); see also 34 CFR §300.320(a)(5)).

Here, Student's IEP explains that Student participates in a functional skills program in an integrated setting. It details that Student is served outside a regular classroom more than 60% of the day and that Student attends homeroom, recess, language arts and unified arts classes with "general education peers."

The IEP also identifies the related services Student receives and a detailed list of the accommodations, modifications, supports and services Student is provided. An Activity Supplement further specifies how program modifications are to be delivered in particular settings (small group activities, for example) and during particular times of the school day (arrival and departure from school, for example). These details satisfy the requirements of 20 USC 1415(d)(1)(A)(i)(V).

***Issue 4: Participation of Student's regular education teacher in the development of the IEP.***

Parent is concerned that none of Student's regular education teachers participated in the development of the IEP. Districts are required to ensure that the IEP team includes "[n]ot less than one regular education teacher of the child (if the child is, or may be, participating the regular education environment)." 34 CFR §300.321(a)(2)).

Under certain circumstances, members can be excused from all or part of an IEP meeting even when the meeting will include a "modification to or discussion of the

member's area of the curriculum." 34 CFR §300.321(e)(2)). In order to excuse a required team member from a meeting, however, parents and the district must consent to the excusal in writing and the excused member must submit input into the development of the IEP to the team, including parents, in writing before the meeting.

Here, Student was participating in the regular education environment (for homeroom, recess, language arts and unified arts classes). The meetings held in November and December included a review of the IEE and possibly revisions to the Student's involvement in the general education environment. Accordingly, one of Student's regular education teachers should have participated in the revision of Student's IEP. District believed that Parent was in agreement that Student's general education teacher did not need to participate in the meeting. The regulation, however, requires written consent from Parent and written comments from the excused member, neither of which was obtained here.

The District violated 34 CFR §300.321(a)(2) by failing to have at least one of Student's regular education teachers attend the IEP meetings.

***Issue 5: Location of related services and modifications.***

Federal regulations require that IEPs include the "anticipated frequency, location, and duration" of special education, related services, supplementary aids and services and program modifications and supports. (34 CFR §300.320(a)(7)). Parent is concerned that Student's IEP does not provide the location of related services and modifications.

The requirement that IEPs include the location of special education and services was also part of the 1999 federal regulations that implemented the 1997 reauthorization of the IDEA. (See 34 CFR §300.347(a)(6)). When it adopted the 1999 regulations, the United States Department of Education noted that the "'location' of services in the context of an IEP generally refers to the type of environment that is the appropriate place for provision of the service. For example, is the related service to be provided in the child's regular classroom or in a resource room?" (Federal Register Vol. 64, No. 48, page 12594, *Analysis of Comments and Changes* by Office of Special Education and Rehabilitative Services, United States Department of Education, March 12, 1999).

Here, Student's IEP states that Student will receive 30 hours of special education services each week (essentially the entire school day) and describes the type of environments that specialized instruction, aids and modifications, will be delivered in, that is, in an integrated setting, and specifically, the regular education environment for homeroom, recess, language arts and unified arts classes, and in a special education classroom for the rest of the school day. Most of Student's related services were delivered as consultation between the therapist and other staff. The IEP includes group adaptive physical education as a related service, and explains that Student participates in unified arts (which includes physical education class) with general education classmates. Student's IEP provides individual communication services; goals and objectives related to communication indicate that some of these services would be delivered in the general

education setting and some in the special education classroom. All in all, the IEP sufficiently describes where Student's special education services would be delivered as required by 34 CFR §300.320(a)(7)).

***Issue 6: Participation of individual who can interpret the instructional implications of evaluation results.***

Districts are required to ensure that the IEP team includes “[a]n individual who can interpret the instructional implications of evaluations results...” (34 CFR §300.321(a)(5)). This person may already be a member of the team (so long as neither the parent nor the child is relied on to serve in this capacity), including, for example, a regular education teacher, a special education teacher or a district representative with adequate special education expertise. *Id.*

Parent is concerned that the District violated this requirement by failing to require the “full attendance” of an individual to interpret evaluation results because the school psychologist attended only the November 10, 2006 meeting. Parent also notes that District did not invite the independent evaluator to the meeting. The regulation does not require, however, that the District obtain the attendance of an independent evaluator.

The regulation also does not require that only the person who conducted a particular assessment interpret it. “An individual who is qualified to conduct a particular assessment does not necessarily have the skills or knowledge to assist the IEP Team in determining the special education, related services and other supports that are necessary in order for the child to receive FAPE.” (2004 *Analysis of Comments and Changes*, page 46670). In other words, the regulation focuses on using evaluation results to design appropriate instruction, a task often best suited to educators and related service providers.

Here, Student's special education teacher and speech-language therapist attended all three meetings held in November and December. Student's physical and occupational therapists attended some, but not all, of the meetings. Principal also attended all three meetings, and holds a certificate from the Department of Education as a teacher of exceptional children. Given the attendance of these members and their individual qualifications with respect to special education or related services, and the content of the District's psychological assessment and of the IEE, there was no violation of 34 CFR §300.321(a)(5)).

***Issue 7: Insufficient notice of January 11 meeting.***

Parent supplemented the original complaint in this matter when District scheduled an IEP meeting for January 11, 2007, but did not notify Parent of the meeting until January 5, 2007. AMSES Section 5.3.3 requires that districts notify parents of meetings at least ten business days prior to the meeting.

Here, District agrees that it did not provide Parent sufficient notice of the January 11 meeting, possibly because the meeting was scheduled by staff who were not typically

responsible for scheduling and noticing meetings. The January 11 meeting was cancelled when Parent declined that meeting date.

Nonetheless, District violated AMSES Section 5.3.3 in scheduling a meeting with insufficient notice to Parent.

### **CORRECTIVE ACTION PLAN**

Red Clay Consolidated School District violated state and federal regulations by failing to have all required school team members at Student's IEP meetings (or properly excusing members from the meetings) and by providing Parent too little notice of one proposed meeting. Having found such violations, the Department of Education must address how to assure the appropriate future provision of services to all children with disabilities. (See 34 CFR §300.151(b)(2)).

#### **Accordingly, the Red Clay Consolidated School District shall:**

1. By June 15, 2007:
  - a. Provide written guidance on the requirements of AMSES Section 5.3.3. to *any* Special Program staff member whose duties include, *or may include*, responsibility for scheduling or providing notice of IEP meetings; and
  - b. Provide the Department of Education with a copy of the written guidance given to staff members.
  
2. By August 30, 2007:
  - a. Develop written policies and procedures for assuring the attendance of all required IEP team members at meetings held for students in the Special Program.
  - b. Such policies and procedures shall specifically address the attendance of regular education teachers as required by 34 CFR §300.321(a)(2).
  - c. Such policies and procedures shall also specifically address the circumstances under which required team members may be excused from meetings as permitted by 34 CFR §300.321(e).
  
3. The written procedures required in paragraph 2 shall:
  - a. Identify responsible staff members for each policy.
  - b. Include a designated supervisory structure and timeline for the implementation and enforcement of the policies.
  - c. Be sent to the Director of the Exceptional Children and Early Childhood Education Group of the Delaware Department of Education within 60 calendar days of the receipt of these findings.



By: \_\_\_\_\_

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Assigned Investigator

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