

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

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 08-12  
(June 25, 2008)**

On January 25, 2008 and April 25, 2008, Parent filed complaints with the Delaware Department of Education on behalf of her son (“Student”).<sup>1</sup> Both complaints allege that the Red Clay Consolidated School District (“District”) violated state and federal laws relating to children with disabilities. Specifically, Parent alleges: (1) the District did not allow her to participate in Student’s IEP meetings during the 2007-2008 school year; (2) the District denied Student transportation to and from school; (3) the District did not allow Student to participate in the administration of the Delaware Student Testing Program (“DSTP”); and (4) the District restricted Student’s school attendance to half days during the months of September and October 2007.

Following the receipt of Parent’s January 25, 2008 complaint, the Department attempted to contact Parent via mail and phone. The Department left several phone messages for Parent, however, Parent did not respond. The Department subsequently closed its investigation of Parent’s January 25, 2008 complaint.

On April 25, 2008, Parent then resubmitted her complaint to the Department containing the same allegations as her January 25, 2008 complaint. These administrative findings and conclusions address Parent’s April 25, 2008 complaint (“Parent Complaint”).

The complaint has been investigated pursuant to federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and the Department of Education’s regulations and procedures at 14 DE Admin Code §§ 923.51 to 923.54. Specifically, the investigation included interviews with the Special Education Director of the District, the Principal of Student’s current school, Student’s one-on-one paraprofessional; and several interviews with Parent. The investigation also included a review of Student’s educational records, including his individualized education program (“IEP”), evaluation and assessment reports, meeting minutes, incident reports, and progress reports and other administrative documents provided by the District.

**FINDINGS OF FACT**

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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.

1. Student attends Separate School within the District (“School”) and is eligible for special education and related services.
2. During most of the 2007-2008 school year, the District implemented Student’s IEP dated June 4, 2007. Parent signed in agreement with the program and placement outlined in Student’s June 4, 2007 IEP.
3. At various times during the 2007-2008 school year, the District attempted to contact Parent to arrange IEP meetings for Student at the District’s offices or another mutually agreed upon location. The District attempted to contact Parent by several means, including mail and phone. The District states that Parent did not respond to its telephone calls or mailed notices informing Parent of Student’s IEP meetings. The District provided records of its efforts to contact Parent, including copies of Certified Mail receipts showing the mailing of IEP meeting notices sent to Parent on October 17, 2007, November 2, 2007, November 28, 2007, January 15, 2008.
4. Student’s one-on-one paraprofessional stated in an interview that she also tried to hand deliver copies of Student’s report card and meeting notices to Parent, but Parent refused to take the envelope. Parent agreed in an interview that she declined one time to take an envelope, but she later took another envelope from Student’s paraprofessional in April 2008 which included Student’s report card.
5. The District scheduled an IEP meeting for May 8, 2008 to conduct an annual review of Student’s IEP. Notice of the May 8<sup>th</sup> meeting was sent to Parent on or about April 16, 2008. Parent did not respond to the meeting notice or phone calls and messages left by the District. The District rescheduled the IEP meeting to May 23, 2008, attempted to contact Parent, and sent Parent a written notice of the rescheduled IEP meeting. Again, Parent did not respond, nor did she appear at the meeting. The District proceeded with the May 23, 2008 IEP meeting without Parent in attendance and revised Student’s IEP as dated May 23, 2008. Parent states she was not aware of the meeting and disagrees with the IEP developed at the May 23<sup>rd</sup> meeting.
6. The May 23, 2008 IEP provides that Student receives English, Math, Science, Social Studies, Physical Education, Health and Electives in a group setting. The Student has a Behavior Intervention Plan (“BIP”) and a Crisis Plan. He also has a one-on-one paraprofessional assigned to him at all times.
7. District states and Parent agrees that on September 19, 2007, Parent contacted the District’s transportation department and advised Student does not need transportation to school in the mornings. During the school year, Parent then moved from one area in the District to another. Parent agrees that she did not report the move to the District. The District also reports that Parent did not contact the District to set up a bus stop location for Student at Parent’s new address. The District proceeded to contact Parent on April 3, 2008 and April 7, 2008 and left messages indicating that a new bus stop was identified for Student consistent with Parent’s new address. However, there was no return call from Parent. The District then sent transportation several times to pick up Student in the afternoon, but Student was not at the assigned

bus stop. After multiple attempts to provide afternoon transportation to Student, it was canceled by the District.

8. Parent states the District restricted Student to attending school for half days during the months of September and October 2007. The District reports that it was Parent who requested Student be permitted to attend school for half days. Since Student had just returned to the District from another placement, Parent told the District half days would assist Student in making the transition. Based on the District's school attendance report, from September 4, 2007 to October 31, 2007, Student was either tardy unexcused, tardy excused or absent unexcused. Student was absent unexcused over eleven (11) days during the months of September through October 2007. Student was tardy unexcused twenty-three (23) days during the months of September through October 2007. The District has documented the arrival time when Student was tardy excused.
9. Parent states the District precluded Student from taking the DSTP. Student's paraprofessional reports that Student said "his Mother told him he was not allowed to take the DSTP." Student attended School on the dates the DSTP was administered, but Student refused to take the test. The District provided letters signed by the paraprofessional explaining that Student refused to take the DSTP because his Mother requested that Student not take the test. The letters are dated November 14, 2007, March 3, 2008, March 6, 2008, March 7, 2008, March 10, 2008, March 11, 2008, March 12, 2008, March 13, 2008 and March 14, 2008.
10. Parent states she was not notified of Student's refusal to take the DSTP. The District states that calls were made to Parent, but Parent could not be reached. The District left phone messages for Parent which Parent did not return.

## CONCLUSIONS

### *Issue One: Parent Participation in Student's IEP Meetings*

A school district must ensure the IEP team for each child with a disability includes the parents of the child. 14 DE Admin Code § 925.21.1.1; 34 C.F.R. § 300.321(a)(1). A school district must also take steps to ensure that one or both parents of a child with a disability are afforded an opportunity to participate at each IEP team meeting. 14 DE Admin Code § 925.22.1; 34 C.F.R. § 322(a). These steps include notifying parents of the meeting no less than 10 business days prior to the meeting, and scheduling the meeting at a mutually agreed time and place. 14 DE Admin Code § 925.22.1.1; 34 C.F.R. § 300.322(a). A school district may, however, conduct a meeting without a parent in attendance if the district is unable to convince the parents to attend. In such an instance, the District must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (1) detailed records of telephone calls made or attempted and the results of those calls; (2) copies of correspondence sent to the parents and any responses received; and (3) detailed records of visits made to the parent's home or place of employment and the results of those visits. 14 DE Admin Code § 925.22.4; 34 C.F.R. § 300.322(d).

The District has provided adequate records documenting its attempts to contact Parent by telephone, mail, and hand delivery of documents to ensure Parent is afforded the opportunity

to participate in Student's IEP meetings and the development of his IEP. Therefore, I find no violation of the IDEA or state regulations.

***Issue Two: Provision of School Bus Transportation***

Based on interviews with Parent and the District, and the documentation provided by the District, the District offered Student transportation to school in the morning which Parent chose to decline. Concerning transportation in the afternoon, interviews with Parent and the District reveal that Parent did not follow up with the District's transportation department to set up Student's bus stop when Parent moved. Once it was established by the District, Student did not appear at the bus stop in the afternoon. Given the documentation provided by the District, the interviews with Parent and the District, and the record of the District's attempts to communicate with Parent, I find no evidence the District denied to provide transportation to Student.

***Issue Three: Student Participation in the DSTP***

The DSTP is a standardized test given to children on a statewide basis to assess student achievement against the State of Delaware's academic content standards. If the IEP team determines that a child with a disability shall take an alternate assessment (instead of the DSTP), the IEP must include a statement of why the particular child cannot participate in the regular assessment, and the particular alternate assessment selected is appropriate for the child. 14 DE Admin Code § 925.20.1.6; 34 C.F.R. § 300.320(a)(6)(ii). In this case, Student's IEP team did not determine that Student should take an alternate assessment. Rather, Parent alleges the District, on its own, precluded Student from taking the DSTP.

I find no evidence to support Parent's allegation. The documentation provided by the District shows the District provided the DSTP to Student, but Student refused to take the DSTP due to statements made to him by Parent. Moreover, when the District attempted to contact Parent to discuss Student's refusal to take the DSTP, she could not be reached and did not respond to the District's phone messages.

***Issue Four: School Attendance for Half Days***

There is no evidence provided that the District mandated Student only attend school for half days. The District reported that Parent requested Student to attend half days due to his difficulty with transitioning to a new school environment. In addition, Student's school attendance reports show Student has not participated in full days or a full school week the entire school year, and Student has a record of multiple unexcused tardiness or unexcused absences. Give the number of days that Student was either absent or tardy, I find no violation that the District denied Student a free and appropriate Public Education ("FAPE").

State and federal regulations governing the education of children with disabilities require that public agencies receiving assistance under the IDEA offer a free, appropriate public education to children with disabilities, including providing special education and related services "in conformity with an individualized education program...." 34 CFR §§ 300.17, 300.320.

Given the documented evidence of District's multiple attempts to communicate with Parent, the District's provision of transportation to Student, and no credible evidence supporting Parent's allegation regarding the District mandating half days of school, I find no violation of the IDEA with respect to Parent's complaint alleging a denial of FAPE.

Finally, Parent has identified numerous issues of concern with the police officer assigned to the School, however, these issues are not IDEA related but are related to criminal proceedings between the Officer and Parent.

Having found no denial of services or systemic regulatory violation, no corrective action plan is appropriate or required. And to that extent, the Student was not denied the free, appropriate public education to which he is entitled.

*\* Reports to the Department of Education should be sent to the Director of the Exceptional Children and Early Childhood Education Group.*

By: \_\_\_\_\_  
Lisa D.V. Cuff  
Education Specialist, ECEC Branch  
Assigned Investigator