

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 10-1
(October 30, 2009)**

On or about July 31, 2009, Parent filed a complaint with the Delaware Department of Education alleging violations of the Individuals With Disabilities Education Act (“IDEA”) and corresponding Delaware law with respect to Student.¹ 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.

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.

The investigation involved interviews with the school principal, behavior analyst, classroom teacher, school psychologist, and occupational therapist of Student’s current school. The investigation involved a review of Student’s educational records, including his May 6, 2009 and May 6, 2008 IEPs, evaluation and assessment reports, progress reports, attendance records, and other relevant records provided by the District. The investigation also included a meeting and interview with Parent to discuss the complaint allegations.

FINDINGS OF FACT

1. Student is currently 13 years of age and is eligible for special education and related services under the Individuals with Disabilities Education (“IDEA”) and 14 Del. C. § 3101 et seq. Student currently has an educational disability classification of “Trainable Mental Disability” as defined in 14 DE Admin Code § 925.9.0.

2. During the 2008-2009 school year, Student attended a special program within the District for the 5th grade, to include summer school. Student currently is a 6th grade student and continuing in the special program. Student has a diagnosis of cerebral palsy and is ambulatory. Student is non-verbal, although he is able to express wants and interests through gestures and signs and can make choices using pictures. Student uses an assistive technology device for communication while at school.

¹ 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.

3. On March 17, 2008, Student received a psychological assessment with parental consent. Parent expressed concerns about Student's levels of cognitive functioning, and his need for toilet training, expressive language skills, and patience. Parent also reported her belief Student is fearful in new situations and exhibits oppositional behavior on occasion.

4. On April 29, 2009, the District conducted a functional skills assessment. Student was assessed in the area of "hygiene" referring to Student's toileting awareness, control, his ability to wipe, flush, manage equipment, wash and dry his hands, complete tasks within typical time limits, nose care, and cover his mouth when coughing or sneezing. Student's skill was assessed at a level "5 to 6" referring to "maximum assistance" to "dependent/unable to do".

5. On May 6, 2009, the District convened an IEP meeting and revised Student's IEP. The IEP describes Student's needs in the areas of fine and visual motor skills, augmentative communication skills, occupational, and speech/language skills. According to meeting minutes, the team discussed Student's toileting needs. Parent reported that Student remains dry at home throughout the night and uses the toilet when he wakes in the morning. But, Student urinates in the diaper for the remainder of the day. The school staff and parent agreed to communicate and share information about Student's toileting patterns at home and school over the summer. The school intended to use the data in Student's educational program once he returned in the fall.

6. Over the summer, the school kept data and continued tracking Student's toileting patterns during the school day. But, the school did not receive any data from Parent related to his toileting at home. In July 2009, the school principal contacted Parent and asked about his progress at home and also reminded Parent how to gather information on Student's toileting habits. The school principal explained the intention to convene the IEP team at the start of the 2008-2009 school year to review Student's progress and develop a plan to address his toileting needs based on the data gathered over the summer.

7. On July 31, 2009, Parent filed this complaint with the Department of Education on behalf of Student.

COMPLAINT ALLEGATIONS

Parent alleges the District denied Student FAPE by failing to address Student's toilet training.

CONCLUSIONS

Provision of FAPE to Student Concerning Toileting Training

Students with disabilities are entitled to receive a free, appropriate public education. “FAPE” is defined as: “special education and related services that are provided at public expense, under public supervision and direction, and without charge; meeting the standards of [state and federal regulations], include an appropriate preschool, elementary school, or secondary school education in Delaware, and are provided in conformity with an individualized education program (IEP) that meets the requirements of [state and federal law]. See, 14 DE Admin Code § 922.3.0; 34 C.F.R. § 300.17.

An “IEP” is defined in state and federal regulations and specifies the provisions that must be included. For example, an IEP must contain: a statement of the child’s present levels of academic achievement and functional performance; a statement of measurable annual goals; a description of how the child’s progress toward meeting the annual goals will be measured; a statement of the special education and related services and supplementary aides and services to be provided to the child; and a statement of any individual accommodations that are necessary to measure the child’s performance on State and school wide assessments. See, 34 C.F.R. § 300.320; 14 DE Admin Code § 925.20.0.

In this case, the District and Parent agree Student has toileting needs. The District has responded to Student’s needs by conducting the functional skills assessment to evaluate his personal hygiene skills, including toileting. School staff assist Student with toileting throughout each school day and monitor his patterns. The District has and continues to record data to track Student’s toileting patterns. According to the District, plans are underway to convene the IEP team and revise Student’s IEP to include specific provisions addressing toileting based on recently gathered data. Student’s IEP contains all required regulatory provisions.

For the reasons stated, I find no violation of state or federal regulations regarding the provision of FAPE to Student.

Finally, Parent states allegations in her complaint concerning the District’s use of the term “perpetrator” in a behavioral incident report, as well as other non-IDEA allegations. The Department’s investigation is limited to alleged violations of the IDEA and corresponding Delaware law.

By: /s/ Kathryn S. Herel
Kathryn S. Herel
Assigned Investigator
Education Specialist

Date Issued: October 30, 2009