

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

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 10-5 (December 11, 2009)**

On October 12, 2009, Complainant filed a complaint with the Delaware Department of Education on behalf of Student.<sup>1</sup> The complaint alleges the Christina 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 included interviews with the assistant principal and educational diagnostician of the high school, and the District’s Director of Special Services. The investigation also involved a review of Student’s educational records, such as the September 23, 2008 IEP, the September 22, 2009 IEP, the behavior plan, functional behavior assessment, disciplinary referrals, evaluation and assessment reports, progress reports, and other educational records provided by the District.

**FINDINGS OF FACT**

1. Student is currently sixteen years of age and, at all relevant times, attended the ninth grade at the high school within the District. Student 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 “Other Health Impairment” as defined in 14 DE Admin Code § 925.6.14.
2. By way of background, Student attended a private program during the summer of 2008 for treatment for major depression, attention deficit hyperactivity disorder (AD/HD), and oppositional defiant disorder.
3. In August 2008, Student was evaluated by the school psychologist at the treatment center. Her full scale was reported as “69” falling in the extremely low average range of general cognitive ability. Achievement testing showed Student’s reading comprehension skills were borderline, her basic math skills were extremely low average, her math reasoning skills were low average, and her written expression skills were borderline. The evaluator noted Student struggles on a daily basis with “inattention, impulsivity, and hyperactivity during all times of day in the [treatment] program.” The evaluator recommended Student be considered eligible for special education services based on her difficulties

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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.

with short term auditory processing, organization, hyperactivity, and inattention. The evaluator also noted Student's family members are bilingual, and Spanish and English are both spoken in the home.

4. Following her participation in the treatment program, Student attended the 9<sup>th</sup> grade at the high school within the District for the 2008-2009 school year. On or about August 27, 2008, the District convened a meeting to evaluate Student and determine her eligibility for special education services. The team considered the evaluation report from the treatment program, parent input, and other information sources concerning Student. The team determined Student was eligible for special education services with a disability category of "Other Health Impairment"
5. On September 23, 2008, the District developed Student's IEP. It describes Student's needs in the areas of reading comprehension, writing, math, task completion, organization, on-task behavior, and reducing impulsivity. The IEP contains goals and objectives to promote Student's progress in the areas of reading comprehension, written expression, mathematical operations, and behavior. Under her IEP, Student was initially placed in inclusion classes, with two curriculum assistance classes. But, Student's placement was later changed to specialized support classes in reading, writing, and math with a special education teacher. Student also continued in curriculum assistance with small group instructional support.
6. Despite the supports in her IEP, Student was displaying behaviors that interfered with her learning. Student received disciplinary referrals for various behaviors, including tardiness, skipping class, and disrespect toward staff. In December 2008, Student was suspended out of school for inappropriate language.
7. On January 29, 2009, the IEP team completed a functional behavior assessment and positive behavioral intervention plan ("BIP") to address Student's behaviors in school. The BIP includes interventions to reduce Student's use of disrespectful language and other attention-seeking behaviors. In February 2009, however, Student was suspended out of school again, this time, for offensive touching to another student.
8. On or about March 18, 2009, the State Attorney General's Office notified the District Student had been arrested in the community for the possession of a deadly weapon. Student's felony arrest violated the District's Student Code of Conduct. The District suspended Student starting on March 19, 2009 and began proceedings to expel Student for the possession of a weapon off of school grounds.
9. While the expulsion was pending, Student was not permitted to return to school or her educational placement. The District offered Student homebound instruction for 5 hours a week from April 3 through April 24, 2009, excluding the week of April 13 through April 17, 2009 for the spring break.
10. On or about April 24, 2009, the District changed Student's placement as a result of the weapon offense and assigned her to the Alternative School. The Alternative School is

one of the District's alternative education programs. It provides self-directed "distance learning" through online instruction while students are at home. Special education students also complete their classwork online, and through work assigned by special education teachers. Students are provided daily feedback concerning their attendance and progress, and meet with teachers at the Alternative School for instructional support.

11. The District did not conduct a manifestation determination before changing Student's placement to the Alternative School in April 2009.
12. On May 19, 2009, the District's school board formally expelled Student for one school year due to the weapon offense with alternative placement at the Douglass School. Student may be considered for re-enrollment at the high school in March 2010.
13. There is no evidence the District provided Student's parents with prior written notice before changing Student's placement to the Alternative School in April 2009.
14. Student finished the 2008-2009 school year at the Alternative School. She made little to no progress on her IEP goals, and received failing grades in her coursework.
15. Student returned to the Alternative School for the 10<sup>th</sup> grade and current 2009-2010 school year. On September 22, 2009, the IEP team convened to annually review and revise Student's IEP. This was the first time the IEP team convened since Student's disciplinary change of placement in April 2009.
16. Staff at the Alternative School report that Student is unfocused, overly social with peers, and does not complete much work. The Alternative School has offered one on one instructional support, but Student usually refuses it.

### **COMPLAINT ALLEGATIONS**

Complainant alleges:

- (1) Student's possession of a weapon in March 2009 was a manifestation of her disability, therefore precluding the District from changing her placement to the Alternative School for disciplinary reasons;
- (2) Student is not receiving appropriate services at the Alternative School and has been denied FAPE in the disciplinary setting; and
- (3) The District failed to provide an interpreter to Student's parent "at any of the District's proceedings".

## CONCLUSIONS

### *No Manifestation Determination Conducted*

As a general rule, the IDEA permits school districts to change the placement of children with disabilities for disciplinary reasons, but only if the behavior is determined not to be a manifestation of the child's disability. Within ten (10) days of a district's decision to change the placement of a child with a disability due to a violation of a code of student conduct, the district, the parent, and relevant members of the child's IEP team (as determined by the parent and the district) must convene to conduct a manifestation determination. *See*, 14 DE Admin Code §§ 926.30.3; 30.5.

The team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- (1) Whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (2) Whether the conduct in question was the direct result of the district's failure to implement the IEP.

If the team answers "yes" to either questions (1) or (2), the conduct must be considered to be a manifestation of the child's disability, and the district must return the child to the placement from which the child was removed. *See*, 14 DE Admin Code §§ 926.30.5-30.6.

In this case, the District acknowledges it did not conduct a manifestation determination before changing Student's placement to the Alternative School in April 2009 due to her violation of the Student Code of Conduct (i.e., weapon possession). The District mistakenly believed a manifestation determination was not required for disciplinary changes in placement for students arrested for out of school conduct as reported to the District by the Attorney General's Office.

The law does not make such an exception. Rather, all local educational agencies are required to conduct a manifestation determination prior to changing a student's educational placement *due to a violation of a student code of conduct*. For purposes of this rule, it makes no difference whether the disciplinary behavior occurred on or off school property. If the behavior violated the student code of conduct, and a district intends to change the student's placement as a result, a manifestation determination is required. This rule is an important procedural safeguard to ensure students with disabilities are not disciplined and removed from the educational setting for conduct related to their disabilities.

The District was required to conduct a manifestation determination at least ten (10) days before it changed Student's placement to the Alternative School in April 2009. ***For the reasons stated, I find a violation of 14 DE Admin Code § 926.30.5 regarding the requirement to conduct a manifestation determination before changing the placement of a student with a disability for disciplinary reasons.***

### **Prior Written Notice**

State regulations require districts to provide written notice to the parents of a child with a disability no less than three (3) business days before the district changes the educational placement of a child with a disability for disciplinary reasons. 14 DE Admin Code § 926.3.0. This prior written notice requirement ensures parents understand the action the district is proposing to take, and the reasons why the action is being proposed. It also informs parents of their procedural safeguards if they disagree with the action proposed by the district, and it allows parents a window of time to exercise their procedural safeguards if they choose to do so before the district implements its decision.

In this case, the District did not provide written notice to Student's parents prior to changing her placement to the Alternative School due to her violation of the Student Code of Conduct. *As a result, I find a violation of 14 DE Admin Code § 926.3.0 regarding the requirement to provide written notice to parents prior to changing the placement of a student with a disability for disciplinary reasons.*

### **Convening the IEP Team to Determine Appropriate Services in the Alternative School**

Under the IDEA, a student with a disability who is removed from the current placement for disciplinary reasons, must continue to receive educational services, as provided in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. See, 14 DE Admin Code § 926.30.4.1. The services may be provided in an interim alternative educational setting. See, 34 C.F.R. § 530(d)(2); 14 DE Admin Code § 926.30.4.2. *But, if the removal is a change of placement, the student's IEP team must determine the appropriate services.* See, 34 C.F.R. 300.520(d)(5); 14 DE Admin Code § 926.30.4.5. This rule makes sense because the IEP team is most familiar with the student's educational needs and can assure the student receives services in the disciplinary setting.

In this case, Student's placement was changed by the District for disciplinary reasons when she was assigned to the Alternative School in April 2009. The District did not convene the IEP team in a timely manner to review the services Student was receiving in the disciplinary setting and decide whether the services were appropriate. The IEP team did not convene until September 22, 2009 during the following school year as part of the annual IEP review process. *For the reasons stated, I find a violation of 14 DE Admin Code § 926.30.4.5 regarding the requirement the student's IEP team determine the appropriate services upon a disciplinary removal resulting in a student's change of placement.*

### **The Provision of FAPE in the Disciplinary Setting**

Complainant alleges Student's disciplinary placement at the Alternative School was not appropriate and denied Student FAPE. As mentioned above, a child with a disability who is removed from the child's current placement for disciplinary reasons must continue to receive educational services, as provided in the general education curriculum, although in another

setting, and to progress toward meeting the goals set out in the child's IEP. *See*, 14 DE Admin Code § 926.30.4.1. The services may be provided in an interim alternative educational setting. *See*, 14 DE Admin Code § 926.30.4.

In this case, Student's IEP was implemented at the Alternative School. Student received instruction to permit Student to progress in the general education curriculum and progress toward meeting the goals in her IEP. ***For the reasons stated, I find no violation of state or federal regarding the provision of FAPE in the disciplinary setting.***

### **Provision of Interpreter for Parent**

Finally, Complainant alleges the District failed to provide an interpreter for Student's parent "at any of the District's proceedings". Complainant alleges Student's parent is primarily Spanish-speaking. According to the District, an interpreter was offered at Student's IEP meetings to assist Student's parent, and also at school meetings when Student's special education services were discussed. The District reports that Student's parent declined the assistance of an interpreter. The District produced meeting minutes to confirm an interpreter was offered by school staff, but declined by the parent at an IEP meeting. ***As a result, I find no violation of state or federal regulations.*** To the extent the Complainant alleges the District was obligated to provide an interpreter at "other proceedings" involving the District, the Department's complaint investigation is limited to IDEA-concerns.

## **CORRECTIVE ACTION PLAN**

### ***Manifestation Determination***

1. On or before ***February 1, 2010***, the District shall convene the team, including Student's parents, to conduct a manifestation determination. In accordance with state and federal regulations, the District shall determine whether Student's behavior in March 2009 was a manifestation of her disability. If the team determines the conduct was a manifestation of her disability, the District must promptly return Student to the educational placement she maintained prior to her disciplinary removal to the Alternative School. If, however, the District believes FAPE cannot be provided in such placement, the District shall notify the Department and Student's parents.

### ***Staff Training on PWN Requirement***

2. By ***March 15, 2010***, the District shall provide written guidance to all school administrators, including principals, assistant principals, and educational diagnosticians, describing the regulatory requirement to provide prior written notice to parents of a child with a disability prior to changing a child's educational placement due to a violation of the District's Student Code of Conduct.

3. By ***April 1, 2010***, the District shall provide to the Department a copy of the written guidance disseminated in #2 above with a list of the staff (by title) who received the written guidance, and a description of how and when the written guidance was disseminated.

*Correction of Other Noncompliance*

4. On or before ***February 1, 2010***, the District shall confer with the Department of Education's Director of the Exceptional Children and Early Childhood Group to develop a corrective action for the District to implement that will correct the other areas of noncompliance identified in these findings.

By: /s/ Jennifer L. Kline  
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Education Associate

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