

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES GROUP  
FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION  
DE AC 10-11 (c)  
*May 26, 2010***

On February 19, 2010, the Department of Education (“DOE”) received a complaint from the Disabilities Law Program filed on behalf of Student.<sup>1</sup> The complaint alleges violations of the Individuals With Disabilities Education Act (“IDEA”) and corresponding Delaware law with respect to Student. The complaint alleges that Maurice J. Moyer Academy (“the Charter School”) 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. An extension of 60 days was granted to complete the investigation as the complaint, as filed, involved three separate students. Additional time was necessary to retrieve and review educational records and to conduct interviews.

The investigation involved an interview with the Charter School’s Dean of Students on 5/12/2010. It also involved a review of educational records including: IEP (12/18/08-2-5-09), prior written notice (2/18/09), evaluation summary report (12/18/08), educational consultation report (9/16/08) and recent correspondence. These records were included in the complaint filed by the Disabilities Law Program. Current attendance and discipline records were not included in the information provided.

After a second request to the Charter School for Student records, a “Student Attendance Report” for September 23, 2008 – May 28, 2009 was received together with emails and “Student Behavior Referral” and “Suspension” forms dated September 8, 2008 – June 9, 2009.

The investigation also included a phone interview with Parent of student on 3/29/2010 to discuss the complaint allegations.

The complaint filed on February 19, 2010 alleges facts and violations that occurred more than one year prior to the date the complaint was received. In accordance with 14 DE Admin Code § 923.53.2.4 the complaint must allege a violation occurred not more than one (1) year prior to the date that the complaint is received. Therefore, the DOE findings are limited to those facts that occurred after February 18, 2009. However some factual findings that involve matters before February 19, 2009 are provided for background purposes only. Additionally, the scope of the Department’s investigation was limited to allegations arising under the IDEA and corresponding Delaware law.

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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.

## **FINDINGS OF FACT**

1. Student is 15 years of age and eligible for special education and related services under the Individuals with Disabilities Education and 14 Del. C. § 3101 et seq. Student has an educational disability classification of “Emotional Disturbance” as defined in 14 DE Admin Code § 925.6.9.
2. Student was enrolled in the Charter School for the school year 2008-09.
3. Parent stated that at the end of the 2008-09 school year, she was asked to pick up Student at the Charter School due to an incident.
4. Parent stated she did not receive prior written notice or were any other discipline provisions provided.
5. On July 22, 2009, Parent received a letter stating that the Charter School was not inviting Student back for the 2009-2010 school year based on overall performance.
6. In a phone interview, the Charter School Dean of Students confirmed withdrawing Student based on the 7/22/09 letter.
7. On July 23, 2009 Charter School entered an exit code of “withdrawn to [district of residence]” as of August 31, 2009.
8. Student did not return to the Charter School for the 2009-2010 school year. Parent stated Student remained at home between September and January.
9. The state Pupil Accounting System identifies January 12, 2010, as the date Student was enrolled in the district of residence.
10. Student began receiving educational services on January 12, 2010, from district of residence.
11. On February 18, 2010, Parent filed this complaint with the Department of Education on behalf of Student.

## **COMPLAINT ALLEGATIONS**

Parent alleges the Charter School denied Student FAPE by failing to provide a free appropriate public education from early September 2009 to January 2010.

## CONCLUSIONS

### **Provision of FAPE to Student**

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; meet 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.

### **Failure to Provide FAPE**

Student was enrolled in the Charter School for the 2008-09 as a student with disabilities and entitled to receive a free, appropriate public education. As evidenced by the letter of July 22, 2009 from the Charter School, Student was not invited to return for the 2009-10 school year apparently for reasons related to discipline. The reason given in the letter sent to Parent from Charter School regarding Student's overall performance is not relevant because the Charter School as a public school may not exclude a child with a disability from receiving special education for any reason.

The Individuals with Disabilities Education Act and corresponding Delaware regulations are applicable to Charter Schools. See, 14 DE Admin Code § 922.2.0; 34 C.F.R. § 300.2.(b)(1) ii.

The Charter School as a public school must comply with the IDEA, which requires the provision of a free and appropriate public education. Students with disabilities are entitled to safeguards and protections concerning the imposition of discipline by school officials. See generally, 34 C.F.R. §§ 300.530 through 536; 14 DE Admin Code §§ 926.30 through 34.0. These rules exist to protect students with disabilities from disciplinary removals from school resulting in a change of placement for behavior that is a manifestation of their disability. School officials may remove a child with a disability who violates a code of conduct from his or her current placement for not more than 10 consecutive school days in a school year, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as the removals do not constitute a change of placement as defined in federal regulations). See, 34 C.F.R. § 300.530(b)(1); 14 DE Admin Code § 926.30.0. Apparently Charter School excluded Student without following any of the required procedures, including prior written notice, a manifestation determination, a functional behavior assessment or development of a behavior support plan.

By not inviting Student to return to the Charter School when an incident occurred at the end of school year 2008-09, I find a violation of 34 C.F.R. §§ 300.530 through 536; 14 DE Admin Code §§ 926.30 through 34.0. Further, because no services were provided to Student during this time of exclusion, I find a violation of 34 C.F.R. § 300.17 ; 14 DE Admin Code § 923 1.0 regarding the requirements for the provision of a free appropriate public education (FAPE).

## **Corrective Action**

Given the failure of the Charter School to provide a free and an appropriate public education to Student, compensatory services for the child are required as outlined below:

1. Determine the number of school days beginning the first day of school for the Charter School in school year 2009-10 up until the day Student began receiving services in district of residence on January 12, 2010.
2. Calculate the number of compensatory hours of educational services owed at the rate of five hours per week, the minimum number of hours required for homebound instruction.
3. Develop a schedule with Parent for the delivery of such services by contracting with a private educational service such as Sylvan Learning Centers or Back to Basics or by providing a tutor to provide such services pursuant to a schedule of days and times agreed to by Parent.

Charter School will provide training to staff regarding procedural safeguards and discipline provisions of the IDEA to include:

1. Provision of FAPE when Students is suspended or otherwise excluded from school beyond 10 days
2. Prior Written Notice
3. Manifestation Determination
4. Functional Behavior Assessment
5. Behavior Support Plans

No later than June 30, 2010, the Charter School must submit to the DOE the schedule for compensatory services, training and copies of training materials or written guidance that will be used .

Upon approval of the written guidance or training materials by DOE, Charter School shall deliver training no later than August 31, 2010 to Staff. Within ten calendar days of the completion of training, Charter School must submit documentation of the provision of training and of staff attendance to DOE.

By: /s/ *Kathryn S. Herel*  
Kathryn S. Herel  
Assigned Investigator  
Education Specialist  
Date Issued: May 26, 2010