

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES GROUP
FINAL REPORT – AMENDED
ADMINISTRATIVE COMPLAINT RESOLUTION
DE AC 10-11 (a)
May 20, 2010**

On February 19, 2010, the Dept. of Education received a complaint from the Disabilities Law Program filed on behalf of a Student alleging violations of the Individuals with Disabilities Education Act (“IDEA”) and corresponding Delaware law. 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.

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 it involved three students. Additional time was necessary to retrieve and review educational records and to conduct interviews.

The investigation involved a phone interview with the Charter School’s Dean of Students on 5/12/2010. It also involved a review of educational records including current and previous IEPs and progress reports, previous attendance records and recent correspondence. Current attendance and discipline records were not included in the information provided by the Charter School.

After a second request to the Charter School for Student records, a “Student Attendance Report” was provided on 5/4/2010.

The investigation also included a phone interview with Parent of student on 4/5/2010 to discuss the complaint allegations.

FINDINGS OF FACT

1. Student is 16 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 has an educational disability classification of “Emotional Disturbance” as defined in 14 DE Admin Code § 925.6.9.
2. In September 2009, Student was enrolled in the Charter School for the 2009-2010 school year. This was Student’s first year of enrollment in the Charter School.
3. Parent and Dean of Students confirm that Parent came to school on September 9, 2009 to return senior fundraiser for brother of Student. Dean of Students stated the reason given for returning the fundraiser by Parent was that brother of Student would not be returning to school.

4. Dean of Students stated that there was no mention by Parent that Student would not be returning to school during their conversation on September 9, 2009.
5. Parent states that the reason she returned the fundraiser was because Student's brother was not being allowed to return to school after the first week of school.
6. Parent states that she would not voluntarily withdraw Student because she wanted Student to receive an education.
7. Parent states that she tried to enroll Student in a school other than District of Residence, but was told that Student was still enrolled in the Charter School.
8. In a letter to the Disabilities Law Program dated January 28, 2010, the Charter School Director states that the Parent voluntarily removed Student and brother from the school , but "no letter was done as mom simply announced this as she left the day she removed [Student] ". This letter was in response to a letter dated January 15, 2010 from the Disabilities Law Program alleging that the Student was prevented from attending the Charter School since early September.
9. Dean of Students stated that the typical practice for a withdrawal letter is to have the Parent sign and for the Parent and School to keep a copy. The Charter School confirms that no withdrawal letter exists for Student.
10. Student was not counted in Charter School's September 30th unit count for the state portion of educational funding.
11. Student received no educational services from September 2009 until April 30, 2010 when Student was enrolled in District of Residence.
12. 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 beginning early in September 2009 because the Charter School would not allow Student to attend school.

CONCLUSIONS

Provision of FAPE to Student

Students with disabilities are entitled to receive a free, appropriate public education (“FAPE”). 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.

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)

Failure to Provide FAPE

Student was enrolled in the Charter School for the 2009-10 school year as a student with disabilities and was entitled to receive a free, appropriate public education.

Given the lack of documentation that Student was voluntarily withdrawn and Parent’s statements and attempts to enroll Student in a district school, I find that Parent’s complaint is credible and that the Charter School did not provide a free and appropriate education to Student beginning in early September.

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 with no discipline procedures followed including prior written notice, a manifestation determination, a functional behavior assessment or development of a behavior support plan.

In this case it appears as if the Charter School summarily expelled Student with no regard for the protections under the IDEA for children with disabilities.

For these reasons, I find a violation of 34 C.F.R. § 300.530(b)(1); 14 DE Admin Code § 926.30.0

Corrective Action

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

1. Determine the number of school days beginning with September 9th up until the time he began receiving services in April in the district of residence.
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 at a schedule and time 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 Student is suspended beyond 10 days
2. Prior Written Notice
3. Manifestation Determination
4. Functional Behavior Assessment
5. Behavior Support Plans

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

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

By: /s/ *Kathryn S. Herel*
Kathryn S. Herel
Assigned Investigator
Education Specialist
Date Issued: May 20, 2010

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.