

DELAWARE DEPARTMENT OF EDUCATION

EXCEPTIONAL CHILDREN RESOURCES GROUP

FINAL REPORT

ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 10-12

(April 20, 2010)

Parent filed a complaint February 2, 2010 and received in the Delaware Department of Education (DOE) office February 19, 2010 on behalf of her son (“Student”). The complaint alleges that the Family Foundations Academy Charter School (“School”) has violated state and federal laws relating to children with disabilities. Parent alleges that the School failed to develop and implement an Individualized Education Program (“IEP”), to assemble a proper IEP Team, to produce a periodic report on the Student’s progress toward meeting the annual goals, to provide educational records, including an IEP to Parent, and to promptly provide educational records to the new District to which Student transferred as required under the Individuals with Disabilities Education Act (“IDEA”).

The complaint has been investigated as required by existing federal regulations at 34 C.F.R. §§ 300.151 through 300.153 and according to the Department of Education’s regulations and procedures, including 14 DE Admin Code §§ 923.51 through 923.53. The investigation included interviews with Parent on March 16, 2010, with Director of the School, Curriculum Director for the School, and Dean of Students during an on-site investigation at the School on March 23, 2010. Interviews with the Special Education Coordinator and Grade Teacher were requested; however, these staff members were not available. The investigation also included a review of Student’s educational records, including IEP from the 2008-2009 school year, progress reports, various evaluation and assessment reports, attendance and discipline records, and written correspondence between the Parent, Parent’s legal representative, and School.

The complaint filed on February 2, 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 1, 2009. However some factual findings that occurred prior to February 1, 2009 were considered for background purposes that involve matters before February 1, 2009 are provided for background purposes only.

FINDINGS OF FACT

1. Student is currently in the third grade at “Elementary School” in Christina School District, having transferred to Christina School District in August 2009. Parent reports that Student is doing well and has had no incidence of suspension at “Elementary School”.
2. Student attended Family Foundations Academy Charter School, for Grades 1 and 2 during the 2007-2008 and 2008-2009 school years respectively. Family Foundations Academy is a public Charter School that serves students in Grades 1 through 5.
3. Student is a resident of the Christina School District and his parent elected to enroll him at Family Foundations Academy. When Student entered Family Foundations Academy (“the School”), he was not yet identified as a special education student.
4. Parent reports that while the beginning of first grade went well and that Student earned academic honors, the end of the year was “rough” for Student. Parent was called to multiple meetings at the School regarding Student’s behavior.
5. Written Behavior Referrals beginning April 1, 2008 list the following behaviors: disruptions, inappropriate language, defiance, fighting, hitting teacher, and harassment.
6. School Code of Conduct interventions were applied that included loss of privileges, conferences with Student, Parent contact, time out, removal from the classroom, or in-school suspension placement.
7. School reports that Student’s academics were satisfactory in first grade during the 2007 – 2008 school year.
8. Student’s Second Grade Progress Report for the 2008 – 2009 academic year reflects that Student received passing grades in Language Arts that varied between letter grades of A to D across trimesters. Student failed all areas of Mathematics during the first trimester, and earned passing grades of D in all areas of Mathematics across the second and third trimesters.
9. During second grade at the School, beginning in October 2008, Student demonstrated a pattern of behaviors that included physical aggression, throwing items, overt defiance, disruptions, and using inappropriate language. Parent indicated that Student stated others “were not treating (Student) well” and that the behaviors did not occur at home.
10. School documented behavior incidents through Behavior Referrals, Anecdotal Records, Teacher’s daily behavior reports, and email correspondence. Between October 15, 2008 and March 4, 2009, Student received approximately 13 disciplinary referrals that resulted in loss of privileges, conferences with Student, Parent contact so that Student could speak with Parent via telephone, removal from the classroom, in-school suspension, and parent conferences.
11. On December 9, 2008, Student received a Behavior Referral due to physical aggression,

overt defiance, and disruption. School staff reported behaviors such as throwing items, shouting at teacher, kicking chairs and table, climbing on a table, running across the room, and turning cartwheels. When Student telephoned his Parent, Student stated he wanted to kill himself. School called Crisis Support and provided a report via telephone.

12. Parent brought Student to a Treatment Center and Student was admitted for inpatient evaluation and treatment. School Behavior Referral indicated that Student was to remain out of school until a treatment summary was faxed.
13. The Treatment Center faxed a treatment summary indicating that from December 9 to December 29, 2008 Student received services that included “participation in individual, group, and family therapy as well as medication management for symptoms of ineffective coping and poor communication.”
14. Student returned to School in January 2009 after the holiday break. Between January 7, 2009 and March 4, 2009, Student demonstrated a pattern of behaviors that included physical aggression, overt defiance, disruptions, and using inappropriate and abusive language. These behaviors resulted in out-of-school suspensions to total approximately 12 days according to school attendance records.
15. The review of School records and school data system reports by this investigator reveal inconsistencies regarding out-of-school suspension data.
16. On February 9, 2009, Student demonstrated behaviors that included kicking a student and threatening a teacher; this resulted in out of school suspension until the February 17, 2009 School Board meeting.
17. On February 9, 2009, School requested a copy of the Behavior Support Plan developed by the Treatment Center.
18. Parent submitted a written request for an evaluation for Student’s special education eligibility on February 17, 2009.
19. The School conducted a Functional Behavior Assessment (FBA) on February 17, 2009. Participants included special education teacher, regular education teacher, school psychologist, Dean and Parent.
20. There was no documentation of informed parental consent prior to conducting the Functional Behavior Assessment.
21. On February 17, 2009, Parent submitted a written request for an evaluation for special education.
22. On February 17, 2009, Parent met with School Board of Directors for the purpose of discussing behavior concerns that included physical and verbal aggressions toward students

and staff, resulting in out-of-school suspensions. The Board President informed Parent in a letter dated February 22, 2009 that the Board determined that Student would be transferred to a new second grade classroom; the new classroom placement would be monitored by the Teacher, Dean of Students, and Director; Student was expected to abide by the Student Code of Conduct; and within 30 days a report summarizing Student's performance in the new class would be submitted to the Board of Directors. Based on the report, the Board would consider the prior recommendation that Student would receive homebound instruction or half day enrollment for the remainder of the school year.

23. The Board of Directors acknowledged receipt of Parent's written request for Student to be evaluated for special education eligibility. The Board of Directors refused Parent's request on the grounds that "testing for special education services is for concerns of academic deficiencies, and the School's special education team decided that Student's difficulty was not academic."
24. School provided *Prior Written Notice* on February 19, 2009 refusing Parent's request for special education evaluation and stating that School would move forward with a Functional Behavior Assessment. Explanation for the refusal indicated that the Student's behavior interfered with his ability to complete assignments and pass tests, and there was no indication that Student struggled academically when "behaving correctly."
25. The February 19, 2009 *Prior Written Notice* explained that the decision was based on teacher interviews, review of class work, tests and progress reports.
26. The February 19, 2009 *Prior Written Notice* explained that no other choices were considered.
27. Student was transferred to "teacher's" second grade class on February 20, 2009. Parent reports that incidence of suspension decreased after new class assignment.
28. Parent reports that "teacher" offered a reward system that included candy, treats, or positive recognition for demonstrating improved behavior at school.
29. There is no documentation of academic or behavioral interventions that were used in the classroom other than the reward system described by Parent.
30. On April 8, 2009, Ms. Leba Tolpin of the Delaware Disabilities Law Program submitted another request on behalf of Parent for evaluation of Student to determine eligibility for special education services.
31. On April 29 and May 5, 2009, School forwarded *Request for Permission to Evaluate* to parent.
32. Parent signed *Permission to Evaluate* on May 6, 2009.

33. A *Psychological Evaluation Report* lists February 2, May 26, and May 28, 2009 as dates for completion of the comprehensive evaluation which included aptitude, achievement and behavior rating scales, parent and teacher reports, student observation, and student interview.
34. School sent an email to Parent on May 28, 2009, inviting her to a June 1, 2009 meeting to review results of evaluation and determine if Student met eligibility requirements for special education.
35. Parent attended June 1, 2009 meeting with a group of qualified professionals which included the school psychologist who explained the evaluation results. The group, including Parent, agreed that Student was eligible for special education services as a student with Other Health Impairment.
36. The group proceeded to convene an IEP team meeting with all required participants, including Parent present.
37. An IEP was developed and Parent signed agreement. Parent received a copy of this IEP.
38. Student's IEP included Services, Aids, and Modifications in the areas of reading comprehension, phonemic awareness, multi-step word problems, multiplication, Behavior-Frustration Tolerance, and multi-step directions. The IEP included measurable benchmarks based on Student's Present Levels of Educational Performance; however, related annual goals were not measurable. Locations of service delivery included Resource Room, General Education Classroom, and for Behavior Frustration Tolerance, "throughout the School."
39. No documentation exists that a Behavior Support Plan was developed, that specific positive behavior interventions and supports were provided, or that data or progress reports were maintained based on the FBA.
40. The IEP does not include explicit instruction regarding replacement behaviors, or any other evidence of supports and specialized services unique to Students' needs, other than expecting Student will benefit from positive modeling of coping and responding behaviors.
41. The IEP reflected need for Extended School Year (ESY) Services during the summer since Student had "difficult time maintaining grades on the final marking period and ESY would allow him to re-master the skills...and...to be promoted to the next grade."
42. No documentation was found to indicate that School provided Parent with *Prior Written Notice* detailing the School's proposal to initiate the identification, evaluation, and placement of the Student, or the provision of a free, appropriate public education (FAPE) to the Student as indicated by the IEP developed on June 1, 2009.
43. Following development of the IEP, Student received instruction to meet IEP goals from the Special Education teacher in a special education class.

44. Student attended summer school during summer of 2009 and Parent received a progress report indicating that Student passed.
45. No documentation exists that Parent received a periodic report on Student's progress toward IEP annual goals as a result of special education services provided after June 1, 2009 IEP meeting or ESY Services provided during the summer, 2009.
46. Parent transferred Student to "Elementary School" in the Christina School District in August, 2009 for Student's third grade. "Elementary School" faxed a request for educational records to School on August 4, 2009.
47. School submitted Student's cumulative records but did not forward Student's Special Education Audit File.
48. Parent reports that repeated requests for special education records were made to School and on October 14, 2009, Parent submitted an email to Martha Toomey, Director of Exceptional Children Group at Delaware Department of Education, stating that Student's IEP had not been forwarded to Christina School District by School.
49. On October 14, 2009, School forwarded Student's Special Education Audit File to Christina School District and a *Records Form* acknowledging receipt was signed by the receiving school.

CONCLUSIONS

1. Failure in Child Find

Each LEA and any other public agency responsible for the education of children with disabilities are required to establish and implement ongoing evaluation procedures consistent with Title 14 § 923.11.0 to identify, locate and evaluate all children residing within the confines of the LEA or other public agency and who are in need of special education and related services. The School was aware of Student's history of behaviors, as well as problem behaviors that escalated in severity on February 4 and February 9, 2009, the latter of which resulted in Student's out-of-school suspension for five days the Board of Directors convened a meeting with Parent to review Student's behavior concerns, and determine Student's placement.

Progress of Student was minimal during the 2008-2009 school year with Student failing in Math in the first trimester and accumulating multiple disciplinary referrals. There is no evidence that school provided classroom based interventions when behaviors began to escalate.

School did not act on its child find obligations seeking permission to evaluate Student to include a functional behavior assessment. School, in fact refused to evaluate Student when Parent requested in February 2009 stating that special education evaluation was for academic deficiencies and that the special education team "decided that Student's difficulty was not academics" despite Student's poor academic record and documented behavior incidents.

For these reasons I find a violation of 14 DE Admin Code § 923.11.0 regarding child find.

2. Permission to Evaluate

The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability shall, after providing notice consistent with Title 14 §§ 926.3.0 and 926.4.0, obtain informed written consent from the parent of the child before conducting the evaluation.

No evidence exists that Permission to Evaluate was obtained prior to the February 2, 2009 date referenced in the *Psychological Evaluation Report*. In addition, given the pattern of Student behaviors, and the Parent's request for a special education evaluation, it is unclear why the School did not proceed with obtaining Parent's informed consent to conduct a comprehensive evaluation to include a Functional Behavior Assessment. While Parent requested and was agreeable to the School's evaluation of Student, it does not remove the School's responsibility to obtain written parental consent for the FBA conducted on February 17, 2009.

For reasons stated I find a violation of 14 DE Admin Code § 925.1.0 regarding the requirement to obtain informed parental consent prior to conducting an evaluation to determine if a child qualifies as a child with a disability.

3. Response to Intervention Procedures

Each public agency shall establish and implement procedures to determine whether a child responds to scientific, research-based interventions (RTI) for reading and mathematics.

Despite Student's failing and marginally passing grades in Mathematics, and Reading performance assessments that fluctuated between grades of A and D, there is no evidence that instructional or behavioral interventions were made or that progress monitoring as outlined in 14 DE Admin Code §925.12.0 was provided.

For the reasons stated, I find a violation of 14 DE Admin Code § 925.12.0 regarding Response to Intervention Procedures.

4. Eligibility Determination and Proper IEP Team

School completed a comprehensive evaluation after the April 8, 2009 request for evaluation and after Parent signed permission to evaluate on May 6, 2009. Eligibility was determined on June 1, 2009 with the appropriate representatives, including the school psychologist who explained the evaluation results.

Subsequent to the eligibility meeting on the same day, the IEP team, with all appropriate members, met and agreed to an IEP.

For this reason I find no violation regarding the requirements of a proper IEP Team.

5. Failure to Develop and Implement an IEP

The IEP developed on June 1, 2009 does not include measurable annual goals that are based on the student's unique needs. Additionally, goals do not include conditions, behavior, and criterion. Further, while Student demonstrated a pattern of behaviors that resulted in Behavior Referrals, out-of-school suspensions, and loss of academic time that impacted his progress in the general education curriculum, the IEP developed on June 1, 2009, does not include identified supports and specialized services unique to the Student's needs.

For the reasons stated, I find a violation of 14 DE Admin Code §§ 925.20.1.2 and 925.20.1.4 regarding the requirement of measurable annual goals, including academic and functional goals designed to meet the Student's needs and supplementary aids and services to be provided to enable the Student to advance toward attaining the annual goals, and to make progress in the general education curriculum.

6. Failure to Provide Prior Written Notice

When School provided *Prior Written Notice* identifying the reasons why it would not proceed with a comprehensive evaluation as requested by Parent on February 17, 2009, the justifications cited, i.e., that the Student's difficulty was due to behavior problems not academic need, were not reasonable. The Student's record of increasingly more serious behavioral incidents and academic failure in Math with erratic Reading scores, coupled with Parent's expressed concern indicate that by its response School appeared unaware of the components of a comprehensive evaluation which could include a functional behavioral assessment.

Further, the School did not provide *Prior Written Notice* to Parent explaining the School's proposal to initiate the identification, evaluation, and placement of the Student, or the provision of a free appropriate public education (FAPE) to the Student as indicated by the IEP developed on June 1, 2009.

For these reasons I find violations of 14 DE Admin Code § 926.3.0 regarding the requirement to provide written notice to Parent before the School proposes or refuses to initiate or change the identification, evaluation, or educational placement of Student or the provision of FAPE.

7. Periodic Reports on Student's Progress

There is no evidence that periodic reports were provided to Parent based on Student's progress on the annual goals of the IEP as required by 14 DE Admin Code § 925.24.7.

For this reason, I find a violation of 14 DE Admin Code § 925.24.7 regarding the requirement to review the IEP to determine whether the annual goals for the child are being achieved and to provide periodic reports on the progress the child is making toward meeting the annual goals such as through periodic reports, concurrent with the issuance of report cards. See also 14 DE Admin Code § 925.20.1.3.

8. Transfer of Records

The receiving school district requested records August 4, 2009 and partial records were sent promptly. The full special education record was not sent until mid-October. IEPs must be in place at the beginning of the school year.

For this reason I find a violation of 14 DE Admin Code .§ 925 23.6.2 because the school did not promptly respond to the request from the new public agency so that the full special education record would be available at the beginning of the school year.

School Response

School has begun self correcting during the course of this investigation and DOE will work with School to verify completion of identified corrections.

Corrective Action

1. Failure to Implement Child Find

1. School shall calculate the number of student days beginning February 2, 2009 until the day the IEP was implemented. School shall offer tutoring to Parent using a method and time convenient for Parent at the rate of one hour for every Student day beginning with February 2, 2009. School shall provide the agreed to schedule to DOE by May 31, 2010. If Parent declines tutoring for Student, documentation of that decision shall be provided to DOE by May 31, 2010.
2. School shall provide written guidance and training for staff regarding child find obligations. A copy of the written guidance must be provided to DOE by June 30, 2010. Training must occur prior to the beginning of the 2010-2011 school year and in no case later than August 15, 2010. Documentation of completed staff training must be provided to DOE upon completion and in no case later than August 15, 2010.
3. Child find training must include written procedures regarding response to intervention as described below.

2. Permission to Evaluate

1. School shall provide written guidance and training for staff regarding Parental Consent procedures. A copy of the written guidance must be provided to DOE by June 30, 2010. Training must occur prior to the beginning of the 2010-2011 school year and in no case later than August 15, 2010. Documentation of completed staff training must be provided to DOE upon completion and in no case later than August 15, 2010.

3. Response to Intervention Procedures

1. School shall provide written guidance and training for staff regarding Response to Intervention procedures. This guidance and training must include the School's procedures for universal screening, tiered interventions, and progress monitoring of all students in all elementary classes. Procedures must include a description of the problem solving team and its functions when children are not performing to benchmark. A copy of the written guidance must be provided to DOE by June 30, 2010. Training must occur prior to the beginning of the 2010-2011 school year and in no case later than August 15, 2010. Documentation of completed staff training must be provided to DOE upon completion and in no case later than August 15, 2010.

4. Eligibility Determination

1. School shall provide written guidance and training for staff regarding Eligibility Determination and *Prior Written Notice* requirements and procedures. A copy of the written guidance must be provided to DOE by June 30, 2010. Training must occur prior to the beginning of the 2010-2011 school year and in no case later than August 15, 2010. Documentation of completed staff training must be provided to DOE upon completion and in no case later than August 15, 2010.

5. Failure to Develop and Implement an IEP

1. School shall provide written guidance and training for staff regarding development and implementation of Individualized Education Programs, which includes writing measurable annual goals. A copy of the written guidance must be provided to DOE by June 30, 2010. Training must occur prior to the beginning of the 2010-2011 school year and in no case later than August 15, 2010. Documentation of completed staff training must be provided to DOE upon completion and in no case later than August 15, 2010.

6. Failure to Provide Prior Written Notice

1. School shall provide written guidance and training for staff regarding *Prior Written Notice* requirements and procedures. A copy of the written guidance must be provided to DOE by June 30, 2010. Training must occur prior to the beginning of the 2010-2011 school year and in no case later than August 15, 2010. Documentation of completed staff training must be provided to DOE upon completion and in no case later than August 15, 2010.

7. Failure to Provide Progress Reports

1. School shall provide written guidance and training for staff members responsible for IEP progress reporting requirements. A copy of the written guidance must be provided to DOE by June 30, 2010. Training must occur

prior to the beginning of the 2010-2011 school year and in no case later than August 15, 2010. Documentation of completed staff training must be provided to DOE upon completion and in no case later than August 15, 2010.

8. Transfer of Records

1. School shall provide written guidance and training for staff regarding requirements for transfer students, including timely provision of educational records. A copy of the written guidance must be provided to DOE by June 30, 2010. Training must occur prior to the beginning of the 2010-2011 school year and in no case later than August 15, 2010. Documentation of completed staff training must be provided to DOE upon completion and in no case later than August 15, 2010.

9. Failure to Provide Disciplinary Protections and to Develop a Behavior Support Plan

1. School shall provide written guidance and professional development for administrators and staff regarding:
 - a. Discipline Provisions of the IDEA,
 - b. Manifestation Determination procedures,
 - c. Functional Behavior Assessment and Behavior Support Plans, and
 - d. The use of positive behavior interventions and supports.
2. A copy of the written guidance must be provided to DOE by June 30, 2010. Training must occur prior to the beginning of the 2010-2011 school year and in no case later than August 15, 2010. Documentation of completed staff training must be provided to DOE upon completion and in no case later than August 15, 2010.

10. Ongoing Professional Development Plan

1. Finally, the DOE requests that School submit a plan for ongoing professional development around Response to Intervention Procedures. Professional Development plan must be provided to DOE no later than August 15, 2010.

By: /s/ Linda Smith
Linda Smith
Assigned Investigator
Education Specialist

Date Issued: April 20, 2010