

DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION BRANCH

FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 10-6 (February 12, 2010)

On December 14, 2009, the Disabilities Law Program of the Community Legal Aid Society, Inc. filed a complaint with the Delaware Department of Education on behalf of Student.¹ The complaint alleges the Christina School District (“the District”) violated state and federal regulations concerning the provision of a free, appropriate public education (“FAPE”) to Student.

The complaint has been investigated as required by federal regulations at 34 CFR. §§ 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 on January 20, 2010 with the District’s Director of Special Services, Educational Diagnostician, and Supervisor of School Climate and Discipline, and a conversation with Student’s counsel on January 4, 2010. The investigation also involved a review of Student’s educational records, such as the August 14, 2009 IEP team meeting notes, documents from the November 6, 2009 IEP meeting, the Prior Written Notice issued by the District, correspondence, electronic mail (e-mail) among Student’s counsel, District personnel, and the District’s counsel, and other records and documents provided by the District and Student.

FINDINGS OF FACT

1. Student is currently fifteen (15) 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 “Emotional Disturbance” as defined at 14 DE Admin Code § 925.6.9.
2. By way of background, Student received his educational program through the Department of Services For Children, Youth, and Their Families (“DSCYF”) for a period prior to the Complaint. In fact, records indicate Student had not attended a school in the District since the 2007-2008 school year when he was admitted to a Residential Treatment Center (“RTC”).
3. In September 2007, the District conducted an IEP meeting for Student while he was enrolled at a regular middle school. Notes from the meeting indicate the IEP team determined to “Continue services for 25 hours/week.” This appears to be the last IEP meeting in the District before Student was admitted to the RTC in March 2008.

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.

4. In the spring/summer of 2008, Student was re-evaluated while in the RTC. This re-evaluation was conducted to assess Student's continued eligibility for special education as required by State and federal requirements. As part of the re-evaluation process, psychoeducational and neuropsychological assessments were conducted.
5. On September 8, 2008, the IEP team from DSCYF reviewed the assessments. It was reaffirmed that Student met the eligibility criteria to receive special education services under the educational classification of "Emotional Disturbance". Records indicate that Student continued to receive educational services from DSCYF throughout the 2008-2009 school year.
6. On August 14, 2009, an IEP meeting was held by DSCYF. The records indicate that the IEP meeting was identified as a "transition" meeting and conducted in anticipation of Student being discharged from the RTC, returning home, and attending school in the District.
7. During the August 14, 2009 meeting, the IEP was revised and the team discussed Student returning to a District school. There is, however, no documentation of District representation at the meeting, nor is there indication that DSCYF invited or notified the District of the meeting. There is documentation the team recommended Student be retained in seventh grade and that Student should attend the District's Alternative School.
8. On August 17, 2009, Student's mother registered Student to attend the District's Alternative School. Mother signed permission forms and other agreements required for enrollment at the District's Alternative School. This includes District's "Authorization For Release Of Information" form. None of the registration forms indicate that the student is eligible and has received special education services. On the same date, there are e-mails among the District's Supervisor of School Climate and Discipline, DSCYF personnel, and other District personnel stating among other things, "Student has a court order calling for 'day treatment' and [District's Alternative School] is not 'day treatment'."
9. On September 9, 2009, Student was discharged from the RTC, but detained at the County's detention center because of an assault charge. He remained in detention until October 8, 2009 when he was released to his home with outpatient services from Child Mental Health. There is no documentation the District was notified of his release until on or about October 13, 2009.
10. On October 13, 2009, the Disabilities Law Program (Student's counsel) notified, via e-mail, the District's Director of Special Services that Student had been discharged from detention and she requested an "expedited IEP team meeting" in order to determine an appropriate educational placement for Student and begin his school attendance.
11. Additional phone messages were left by Student's counsel for the Director of Special Services on October 19 and 21, 2009 without response.

12. On October 22, 2009, via e-mail, Student's counsel contacted the District's Office of School Climate and Discipline reporting the e-mail to the Director of Special Services had not been responded to, and Student needed to be assigned a school to attend. On the same date, a representative of the Office of School Climate and Discipline contacted Student's counsel via telephone.
13. On October 27, 2009, Student's counsel contacted the District's counsel asking for assistance in getting Student in an appropriate educational program and outlining her attempts to contact the District staff.
14. On October 30, 2009, Student's counsel was notified, via mail, that an IEP team meeting had been scheduled for Friday, November 6, 2009, at a District school. An invitation to the meeting, dated October 30, 2009, was addressed to Student's parents.
15. The District's IEP team met on November 6, 2009 as scheduled. The participants included, among others, Student, Student's parents, District staff, and a representative from the Division of Child Mental Health of DSCYF. The team agreed Student would be placed at the District's Alternative School, the August 14, 2009 IEP would be continued, and Parents were offered twenty (20) hours of compensatory services "provided by Back to Basics." While there is no indication when Student was to start attending school, it is assumed that Student would have begun a short time after the IEP meeting in order to allow the District enough time to arrange for transportation.
16. Before Student started attending school, however, he was arrested on November 9, 2009 for an incident that occurred in the home, and was again placed in an RTC. Student began attending the District's Alternative School on January 11, 2010, and as of January 20, 2010 was being transported by Child Mental Health from the RTC, where he resides, to the District's Alternative School on a daily basis.

COMPLAINT ALLEGATIONS

The Complainant alleges:

- (1) The District failed to provide Student with FAPE as a student with a disability under applicable laws and regulations; and
- (2) The District's proposed twenty (20) hours of compensatory services is not adequate given the amount of time that FAPE was allegedly unavailable to Student.

CONCLUSIONS

Provision of FAPE to Student

FAPE "shall be available to all children with disabilities residing in Delaware..." Specifically, each school district and other public agency who provide special education services to students

with disabilities is responsible for ensuring that those services are provided as required by State and federal requirements.

In this case, DSCYF was the last public agency providing educational services to Student prior to his transfer to the District. State and federal regulations outline how the receiving public agency (i.e., the District) must respond to a transfer student with an IEP:

IEPs for Children Who Transfer From and to Public Agencies Within Delaware: If a child with a disability (who had an IEP that was in effect in a previous public agency in Delaware) transfers to a new public agency in Delaware, and enrolls in a new school in the same school year, the new public agency (in consultation with the parents) shall provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency).

A child with a disability who transfers from one Delaware public agency to another shall be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a mutual agreement of the parents and the receiving public agency. This agreement shall be documented by the signatures of a parent and the receiving public agency on a temporary placement form or the cover page of the IEP. Within sixty (60) days of the child's initial attendance in the receiving public agency, the receiving public agency must either:

Adopt the child's IEP from the previous public agency at an IEP meeting convened for that purpose, or develop, adopt, and implement a new IEP that meets the applicable requirements in 20.0 through 24.0.

See, 14 De Admin Code § 925.23.0; 34 C.F.R. § 300.323(e).

The issue raised by the Complaint is whether the District offered FAPE to Student in a timely manner and consistent with the regulations regarding transfer students. DSCYF failed to invite the District to the August 14, 2009 IEP meeting to participate in planning for Student's transition to the District. Before Student's discharge, Student's mother registered Student on August 17, 2009 to attend school in the District. But once Student was discharged, he was detained at the County detention center until approximately October 8, 2009. The District was not notified of Student's actual release until October 13, 2009 when an e-mail was sent to the District by Student's counsel. The District then convened an IEP meeting within three (3) weeks, on November 6, 2009, and decided to accept and implement the IEP developed by DSCYF.

Shortly after the District was notified of Student's release by e-mail on October 13, 2009, the District should have provided services to Student consistent with those in the DSCYF IEP, until the District was able to hold the IEP meeting on November 6th. Once a transfer student is enrolled, the regulations require the District to temporarily place the student in an educational setting which appears most suited to the student's needs based on a mutual agreement of the parents and the District. The District then has sixty (60) days to convene an IEP meeting and formally accept the transfer IEP or write a new one.

In this case, the District should not have waited until the November 6th IEP meeting to offer services to Student. At the same time, the Department does not believe it is reasonable to expect the District to offer services immediately after the October 13th e-mail was sent referencing Student's discharge. It is reasonable to assume the District would require some time, at least until October 19, 2009, to arrange services and a temporary placement for Student consistent with his transfer IEP and pending the District's November 6th IEP meeting.

For the reasons described, I find a violation of state and federal regulations regarding the obligation to make FAPE available to Student.

Compensatory Instruction

As outlined above, the Department has determined that Student was denied services from approximately October 19, 2009 through November 6, 2009. The District acknowledges a denial of services, and has already offered Student twenty (20) hours of compensatory instruction. Student alleges twenty (20) hours of compensatory services is not adequate.

It was reported that when determining compensatory services for students, the District provides one (1) to three (3) hours of compensatory instruction for each day of service actually missed by a student. The District must ensure, however, when calculating compensatory services for a student, the student's individual needs are taken into account, the student's IEP is reviewed, there is adequate input from persons most familiar with the student's educational program, and the compensatory services will be delivered in a form and duration that will truly "compensate" the student for lost, quality instruction time. With this standard in mind, the Department directs the District to re-calculate the compensatory time owed to Student based on the absence of services from October 19th through November 6th.

CORRECTIVE ACTIONS

Determination of Compensatory Instruction for Student:

1. The District must take steps to schedule an IEP team meeting to occur no later than ***March 31, 2010***, unless a later date is requested by Student's parents. The team must consist of all required participants including, but not limited to, a general education teacher of Student, Student's special education teacher, Student's parents, a representative of the District who can allocate resources, and others determined appropriate by the District and parents consistent with applicable requirements. The IEP team shall do the following:
 - (a) Review Student's current IEP, including goals, objectives, services, and his educational placement;
 - (b) Determine on an individual basis, appropriate compensatory services for the amount of time the District did not make FAPE available to Student from October 19 through November 6, 2009. The compensatory services

determined by the IEP team must be stated in a clear manner, understandable to all involved and include the nature of the service or services, the frequency of the service or services, and the duration for the provision of the service or services; and

2. The District shall provide Parents with Prior Written Notice of the decisions in accordance with applicable State and federal requirements, including informing the parents of the procedural safeguards; particularly the right to file a due process complaint over matters involving the provision of FAPE, to include the compensatory services determination.
3. On or before ***April 2, 2010***, the District shall provide a report to the Department describing the compensatory services determination.

Other Corrective Action Required:

1. Federal regulations, specifically, 34 CFR §300.151(b)(2), require the State, under its general supervisory authority to address “*appropriate future provision of services for all children with disabilities.*” Therefore, the District must outline the steps that will be taken to ensure no delay in placement occurs for other students with disabilities who transition into the District from a program where special education services are provided by another agency.
2. On or before ***May 28, 2010***, the District must provide the Department with a written report describing the steps it will be take and implement within 30 days of that date.

The District may confer with the Department of Education’s Director of the Exceptional Children Resources Group to correct areas of noncompliance identified in these findings, including the actions required.

By: /s/ Edward Wulkan

Edward L. Wulkan

Assigned Investigator

Date Issued: February 12, 2010