

DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION BRANCH

FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 11-1 (January 7, 2011)

On November 10, 2010, Ms. Maria Mendoza, on behalf of the Parent Information Center of Delaware, Inc. ("PIC") filed a complaint with the Delaware Department of Education with regard to Child.<sup>1</sup> The complaint alleges the Indian River School District ("the District") violated state and federal regulations concerning the provision of a free, appropriate public education ("FAPE") to Child.

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: a meeting with the District officials (Assistant Superintendent, Special Education Supervisor, T.O.T.S. Coordinator/Teacher, and T.O.T.S. Community Home Liaison on December 8, 2010); subsequent conversations with Special Education Supervisor on December 14 and 15, 2010; conversations with the complainant on November 16, December 9 and 13, 2010; and a review of documents provided by the complainant and the District.

**FINDINGS OF FACT**

1. Child is currently 3 years of age, and at the time of the complaint was not receiving special education services from the District.
2. Child had been receiving Part C early intervention services with the Early Childhood Program since September 11, 2009 due to a Developmental Delay; Sensory Integration Dysfunction. The services included early childhood education, occupational therapy, and speech language pathology.
3. On March 23, 2010, a transition conference was held to plan for Child's "smooth transition from Part C to Part B services." In attendance at this meeting, were Parent, the District's representative, and the Child Development Watch (CDW) Service Coordinator. A transition plan was developed stating the CDW Service Coordinator "will update the District with updated evaluation information from the [Early Childhood Program]" and "assist the family in registering Child for Head Start and other preschool programs," and the District "will determine eligibility and schedule an IEP meeting by September 1, 2010."
4. In August 2010, the District received a request to evaluate Child for Autism due to Child's lack of progress with speech and continued socialization delays. The District admits the

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<sup>1</sup> The Final Report identifies some people and places generically, to protect personally identifiable information about the child 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.

request was received in August 2010.

5. The District did not respond to the request for an evaluation, and failed to provide Child's parents with prior written notice explaining the District's position with respect to the evaluation.
6. Meanwhile, Parent proceeded to an independent, private provider to evaluate Child for Autism.
7. The District did not hold the IEP meeting for Child by September 1, 2010 as discussed during the transition conference. Child turned the age 3 in October 2010.
8. On November 10, 2010, PIC filed this Complaint on behalf of Child, and the Department notified the District of the Complaint on or about November 12, 2010.
9. Following notification of the complaint, the District contacted Parent on Friday, November 12, 2010, to set up an IEP team meeting for Monday, November 15, 2010. According to the District's telephone log, the CDW caseworker was also informed of the meeting and invited to attend.
10. On November 15, 2010, the IEP team convened to develop Child's IEP. Those attending the meeting included Parents, the District special education teacher, District administrator, District Speech Language Pathologists and, and the District's Home Community Liaison, who also served as a translator for Parents. The Part C caseworker was not able to attend the meeting.
11. The IEP team developed an IEP for Child that was agreed to by Parents on that date.
12. The District's Supervisor of Special Education reported the District will complete a comprehensive evaluation around January 5, 2011 to consider Child's eligibility in the disability category of Autism, and the District scheduled an IEP team meeting for January 12, 2011.
13. The District agrees it failed to hold an IEP in a timely manner and FAPE was not provided until special education services began on or about November 16, 2010.

### **COMPLAINT ALLEGATIONS**

Complainant alleges:

- (1) The District failed to provide a smooth and effective transition from Part C to Part B as required by state and federal regulations.
- (2) The District failed to develop an IEP for Child by the 3<sup>rd</sup> birthday as required by state and regulations.

- (3) The District failed to provide Prior Written Notice related to Parent's request for an evaluation concerning Child's eligibility for special education under the disability category of Autism.

### **CONCLUSIONS**

#### ***Provision of a Smooth and Effective Transition Develop an IEP by Child's Third Birthday Provision of FAPE to Student***

State and federal regulations require that each identified child with a disability is ensured a smooth and effective transition from Part C to Part B; has an IEP in place by their 3<sup>rd</sup> birthday; and has FAPE available to them in accordance with applicable law and regulation. The District representatives acknowledge these *requirements were not met. As a result, I find violations of 14 DE Admin Code §§ 923.24.1 and 24.2 and 34 C.F.R. §§ 300.124(a) and (b).*

In this case, Child turned the age of 3 in October 2010, and an IEP was not developed until November 15, 2010. However, Child was entitled to special education services from the District upon the first day of the 2010-2011 school year. Pursuant to the State's "*Interagency Agreement for the Delaware Early Intervention System Under Part C of the IDEA*" dated October 2011, Part C eligible children who become three (3) between September 1<sup>st</sup> and December 31<sup>st</sup> and who are eligible for Part B services, are entitled to receive special education services through Part B beginning on the first day of the school year in the district of residence.

#### ***Prior Written Notice***

State and federal regulations require that each Public Agency give written notice to the parent of a child with a disability anytime the Public Agency proposes to refuse to initiate an evaluation of a child. In this case, the District acknowledges the receipt of a written request for an evaluation for Autism in August 2010, and the District did not respond. *As a result, I find violations of 14 DE Admin Code § 926.3.0 and 34 C.F.R. § 300.503.*

Since the filing of this Complaint, the District is proceeding with a comprehensive evaluation to consider Child's eligibility for special education services as a child with Autism.

### **CORRECTIVE ACTIONS**

The District must take the following corrective actions:

1. Child Specific Corrective Actions:
  - Review and revise Child's IEP that was developed by the District on November 15, 2010, as necessary as a result of any pending evaluations;
  - Determine on an individual basis, appropriate compensatory services for the amount of time FAPE was not available to Child (i.e, from the first day of the

2010-2011 school year to the date the District began implementing Child's IEP). 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 that are to be compensated for those not provided as required;

- Provide Parents with Prior Written Notice of the decisions in accordance with applicable State (14 DE Admin Code § 926.3.0) and federal requirements, including informing the parents of the procedural safeguards; particularly the right to file a due process complaint should they disagree with any decision made by the team, including the compensatory services determination. The District must ensure the parents are provided this information in their native language or take those steps necessary to ensure the parents understand the written notice and procedural safeguards.

2. Other corrective action required:

Federal regulations, specifically, 34 CFR §300.151(b)(2), requires 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 and provision of service occurs for other children with disabilities who transition from Part C to Part B. This may include reviewing the interagency agreement currently in place and ensuring it is being implemented by District staff as written.

The District must provide the Department with a written report documenting that all corrective actions have been completed no later than February 15, 2011.

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. Requests for technical assistance must be made sufficiently in advance of the date the corrective actions must be completed.

By: /s/ Edward Wulkan  
Edward L. Wulkan  
Assigned Investigator

Date Issued: January 7, 2011