

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION BRANCH**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 11-3 (June 3, 2011)

On April 27, 2011, Parent 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 by failing to implement Student’s IEP.

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. The investigation included interviews with Parent on May 12, 2011, and interviews with District staff on May 19, 2011. Various District staff were interviewed, including the Principal of the Special Program, Student’s Special Education Teacher, the Para-Educator, and the Assistant Principal. The investigation also involved a review of Student’s IEP, evaluation reports, progress reports, and other educational records provided by the District.

FINDINGS OF FACT

1. Student is enrolled in a Special Program for children with disabilities in the Christina School District. Student is eligible for special education and related services under the Individuals with Disabilities Education (“IDEA”) and 14 *Del. C.* § 3101 *et seq.*
2. Student’s IEP was developed on December 14, 2010. It describes his needs in the areas of reading, writing, math reasoning, communication, language, and socialization. The IEP contains annual goals, benchmarks, and special education and related services to promote Student’s progress in these areas. Student’s post-high school goals are identified as working in the technology field, attending post-school training, or college, and living independently in the community.
3. Student’s IEP describes him as a diligent worker, cooperative and helpful in school and at home, and polite and respectful with school staff. The IEP states Student completes his work neatly and does well on the computer.
4. Student is served by the Special Program, and attends classes within the District’s high school. As a result, Student is able to attend his home school and be educated with non-disabled peers while also receiving services from the Special Program.
5. Student receives most of his subject matter instruction from highly qualified special

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.

education teachers in a self-contained classroom setting. Student also receives a daily class period of targeted academic support from his primary Special Education Teacher in a small group setting.

6. Special Education Teacher accompanies Student to most of his subject matter classes, and provides accommodations and instructional support to him, as needed, for academic, behavioral, and social skills. She is certified in special education and appropriately certified to work in the Special Program. Special Education Teacher reported she implements Student's IEP, monitors his performance, and collects data to determine his progress on IEP goals and short term benchmarks.
7. The Special Program also provides a Para-Educator to support Student, his classmates, and their instruction. The Para-Educator assists in daily tasks, such as monitoring social interactions among students, checking homework, preparing materials for class, record keeping, assisting students with transitions, planning for student activities, and providing accommodations to students. Para-Educator has a bachelor's degree in special education, and receives ongoing professional development through the Special Program.
8. Special Program staff reported they use a "team approach" to supervising students with disabilities throughout the school day, to include helping them transition from one class to another, to restroom breaks, lunch, and during class time, as needed. Such supervision is not specified in their IEPs, but staff reported "it is just something we do for our students".
9. On the morning of March 24, 2011, Parent contacted the school and advised that Student told her he had been assaulted by two other students in the school bathroom. Parent was not sure of the specific date the incident occurred, but indicates the "trauma and assault" is "recorded and documented in hospital and school records". According to Parent, the Para-Educator was responsible for supervising Student during restroom breaks, failed to do so, resulting in injuries to Student.
10. Parent spoke with law enforcement authorities, and various school staff and District level administrators, including the Superintendent, the Assistant Superintendent, and the Supervisor of School Climate and Discipline. Parent feels the District has neither followed up with her concerns, nor conducted an investigation after she reported the assault.
11. In her complaint, Parent requests that Student continue receiving instruction from Special Education Teacher, but no longer be supervised by or assigned to Para-Educator.
12. The District claims it investigated the assault reported by Parent. On March 24, 2011, the Assistant Principal spoke with Parent by phone on three occasions to gather information about the incident. After Parent contacted the school, administrators offered to interview Student. According to the District, school administrators also watched video surveillance tapes from the previous day for any suspicious activity among students in the bathroom area. The District claims no suspicious activity was noted. Special Education Teacher

and Para-Educator were interviewed by administrators and reported they supervised Student's bathroom breaks consistently, and they did not observe anything out of the ordinary to suggest an assault of Student occurred.

13. The District contends Student's IEP was implemented, and Student was properly supervised by Special Program staff.
14. To the extent the complaint alleges that "hospital records document the assault", the hospital records were not made available to the Department for review.
15. Student has not attended school since March 24, 2011.
16. Without waiving its position, the District offered to assign Student to another instructional team through the Special Program. Parent declined, expressing her preference that Special Education Teacher remain as Student's teacher. Without waiving its position, the District is willing to consider assigning another staff Para-Educator to promote Student's return to school.
17. The District has scheduled an IEP team meeting for June 10, 2011 to discuss Student's IEP and school attendance.

CONCLUSIONS

The Department has not identified a violation of Part B of the IDEA or corresponding state regulations. The complaint investigation is limited to determining whether there was a violation of Part B of the IDEA or state regulations concerning the provision of special education and related services. *See*, 14 DE Admin Code § 53.0; 34 C.F.R. § 300.153. To the extent Parent states other issues or claims, the Department's authority is limited to IDEA claims. The limits of the Department's jurisdiction within the special education complaint process were explained to Parent. The Department urges the District and Parent to work collaboratively to promote Student's return to the public program.

By: /s/Jennifer L. Kline
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