

DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION BRANCH

FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 11-4 (July 11, 2011)

On May 12, 2011, Parent filed a complaint with the Delaware Department of Education on behalf of Child.¹ The complaint alleges the Caesar Rodney 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 in accordance with federal regulations at 34 CFR. §§ 300.151 to 300.153 and Department of Education’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included meeting with the District’s Special Education Director, Building Principal and Assistant Principal, School Psychologist, Child’s regular education teacher, special education teacher, and speech language pathologist on June 10, 2011. Prior to the site visit, the investigator spoke with the complainant on May 16, 2011, to discuss alternative ways to resolve the complaint, explain the investigation process and gather clarifying information regarding the allegations.

FINDINGS OF FACT

1. Child is currently nine (9) years of age and was in the third grade at Elementary School during the 2010-2011 school year.
2. Child receives special education and related services, and is identified as a child with a disability under the classification of “Other Health Impairment” (“OHI”).
3. In January 2009, Child transferred into the District from another state. At the time, the District’s school psychologist administered a psychological assessment (Wechsler Intelligence Scale for Children-Fourth Edition, WISC-IV) and an educational assessment (Woodcock-Johnson Tests of Achievement-third Edition, WJ-III) to determine Child’s present levels of functioning and educational needs.
4. On May 24, 2010, Child’s current Individualized Education Program (IEP) was developed by the IEP team and implemented throughout the 2010-2011 school year. The IEP identifies Child’s educational placement as “Placement A” in the general education setting for 80% of the day or greater.
5. Child receives special education and related services, and is identified as a child with a disability under the classification of “Other Health Impairment” (“OHI”).

¹ 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.

6. Child was determined to need speech language therapy and occupational therapy in addition to special education services.
7. Child's IEP contains academic annual goals in Reading (decoding/word study, fluency, comprehension), Written Expression, and Mathematics (number sense, numerical operations). Additionally, the IEP contains annual goals for verbal language (speech language therapy), visual perception (Occupational Therapy), and social interaction and impulse control.
8. Child's academic special education services (Reading and Math) included the following:
Reading; small group (with one to six (6) other students with the special education teacher 1 hour per day, five (5) days per week; and from December through May, 25 minutes, generally 2 times per week of sight word recognition drills provided by the school psychologist. This is in addition to the 30 minutes of large group reading and independent seatwork based upon the IEP. Math; small group instruction 60 minutes per day, 5 days per week was taught by both the regular and special education teachers.
9. At the start of the 2010-2011 school year, Child's teacher sent home a letter to all parents outlining classroom rules. The letter included a list of consequences for not following these rules. One rule states that students must come prepared with materials and homework assignments. The consequence for not having homework assignment is "loss of recess until completed." The letter asked parents to discuss the rules with their children so each child knows that parents are aware of the expectations.
10. On December 3, 2010, the District held an IEP team meeting requested by Parents. According to the District's Prior Written Notice, school staff and Parent discussed changing Child's placement to a self-contained special education classroom (Level IV). The Prior Written Notice states, "At this point the IEP team not certain that this need (sic) to be done." The Prior Written Notice states that Parent will visit a Level IV setting (which would require a different school since the school Child attends does not have a self-contained special education classroom), and states the team will meet again at the end of the second marking period to assess progress and see if additions to the current IEP are effective.
11. On January 4, 2011, Child did not conform to one of the classroom rules and lost recess. The school reported it to Parents through the journal sent home daily.
12. The IEP team reconvened on February 1, 2011, and revised the IEP to provide additional opportunities for Child to be allowed to have recess if specific classroom rules are not followed.
13. The Prior Written Notice document (signed by Parent) does not address consideration of a self-contained classroom. School staff reported that Parent did not visit the self-contained classroom, as suggested, and in fact, did not want the child's placement changed, nor did Parent raise the matter at the meeting. Staff did not believe a change in placement was needed as the child's program was appropriately meeting his needs and being implemented

in the least restrictive environment as required. The “Notice” also states that a copy of the procedural safeguards notice is included with the document that provides the Parent with all rights as required by law. Parent gave no indication that there were any objections to the decisions made at the meeting or was in disagreement with those decisions.

14. Child began taking medication in mid to late April to address his short attention span and general inattentiveness. Since beginning to take the medication, Staff report that they noted significant improvement in Child’s attentiveness and general classroom performance.
15. The Delaware Comprehensive Assessments (DCAS) are administered in the fall, winter and spring of the school year. Child demonstrated improvement in all subject matter tested by the assessments, including Reading, Language Arts and Mathematics. He met proficiency standards in all areas except mathematics where his score fell just below proficiency but still demonstrated significant improvement over the fall score.
16. On May 11, 2011, the IEP team met again, reviewed Child’s progress on the annual goals, and revised the IEP for the next school year. The Prior Written Notice states that “[Child] is making progress in this setting.”
17. On the end of year report card, Child received “Satisfactory” ratings for all English Language Arts and Math competencies and promotion to 4th grade was recommended for the 2011-2012 school year.

COMPLAINT ALLEGATIONS

Based upon the letter of complaint and telephone interview with Parent, Parent’s allegations are as follows:

- (1) Child failed to make meaningful educational progress;
- (2) The District failed to adhere to Child’s IEP by denying his participation in recess;
- (3) Child’s IEP team did not follow through on discussing changing Child’s placement to a self contained classroom at the February 2011 IEP team meeting as discussed at the December 2011 meeting (14 DE Admin Code § 925.24.1.2); and
- (4) School Staff did not send home tests and other graded paperwork “on a consistent basis” to parents as agreed to at the February 2, 2011 IEP team meeting.

CONCLUSIONS

Meaningful Educational Progress

Parent’s allegation that Child has not received FAPE is based primarily on her concern “[Child

is] not on a trajectory to meet annual goals” in Reading and while “[Child] is meeting math annual goals and benchmarks, he is failing math on his report card.” The IDEA and state law require an IEP be based on the unique needs of a child with a disability, provide significant learning, and confer meaningful educational benefits on the child that is gauged to the child’s potential. 14 *Del. C.* § 3101(5).

In this case, the evidence demonstrates the District provided a program based on Child’s unique needs to assist Child in meeting the annual goal and benchmarks. Schedules of staff working with Child and examples of curriculum based instructional aides clearly demonstrate the program was implemented in accordance with the requirements. Meaningful educational benefit is evidenced by Child’s report card grades, standardized test results, and his completion of the competencies in all academic areas to the degree that he was promoted to the 4th grade.

Denied recess in violation of behavior contract/IEP:

At the start of the 2010-2011 school year, Child’s classroom teacher sent home a letter to all parents outlining classroom rules. Rule #5 states, “Come prepared with materials and homework assignments.” This letter includes a section that notifies parents of “Consequences for INAPPROPRIATE Behavior” that includes a progression of loss of recess from 5 minutes to being denied the entire recess depending on the behavior.

On January 4, 2011, Child came to class without his daily planner, reading log, math folder, and reading textbook. Consistent with the classroom rules identified to all students and their parents, Child was not permitted to go to recess on the next day (January 5, 2011).

At the February 1, 2011, IEP team meeting, it was agreed that “if a consequence of lunch recess detention is warranted, [Child] will have one additional day to rectify the situation.” Added on 2/25/2011, the IEP states “Teacher must confer with administration before denying student any portion of his recess.”

In this case Child was denied recess on January 5, 2011 consistent with the classroom rules and not in violation of the IEP or behavior contract in effect at that time as alleged by Parent. At the February IEP meeting, the IEP team revised the program, and the student had not been denied recess after that time. Therefore, I find no violation of state or federal regulations.

Discussion of Child’s placement in a more restrictive environment at the February IEP team meeting:

The prior written notice document of the December 3, 2010 IEP meeting reports that the IEP team considered “change in placement to level IV setting.” However, the document goes on to state that the team was not certain that the change to a more restrictive environment was necessary at that time. The document also states that Parent will “visit level IV setting” and the team would meet at the end of the second marking period and assess Child’s progress to see if the revisions to the IEP put into place at that time are working.

At the February 1, 2011, IEP team meeting, at which Parent participated, there is no documentation that the team discussed changing Child's placement to a level IV setting. However, with that said, the IEP team reviewed the program, Child's progress on the IEP and reviewed the current placement. At that time it was determined that the current placement (Regular Setting; in the general education classroom greater than or equal to 80% of the day) remained appropriate. On the same date Parent signed that she agreed with the program described in the document and the placement determination.

Additionally, school personnel reported that, as is their practice, in such cases where a parent is interested in a more restrictive environment (level IV), parents are asked to visit the program so that they have an understanding of the classroom environment. Parent had not visited a level IV setting nor is there documentation that parent was dissatisfied with the current placement at that time or inquired about such a placement.

IEP teams have the responsibility to determine the educational placement for each child identified as disabled who requires special education services. In making that determination, in accordance with 14 DE Admin Code § 925.27.1, the team shall determine the child's placement in the *least restrictive environment* based on the child's individual needs and the services identified in the IEP. In this case, the team met their statutory obligation and while not discussing "changing Child's placement to a level IV setting," they clearly reviewed the program and determined the educational placement they thought was the least restrictive environment in which the IEP could be satisfactorily implemented, provided proper written notice of their decision, and provided Parent with a copy of the procedural safeguards, including the right to request a due process hearing. Therefore it is determined that District met their obligation with regard to this allegation and no violation occurred.

Send home tests and other graded paperwork "on a consistent basis" to parents

At the February 1, 2011, Parent addressed concerns regarding Child's progress in mathematics, particularly his grade. Adjustments were made to strategies in instruction and methods to assess the child weekly in the subject matter. Additional notes to the minutes of that meeting state, "A parent folder will be sent home daily of things that the parent should review nightly examples include math practice sheet... and notification of cancelled assessment will be sent to parent via agenda book." Based upon the interview with school personnel, it was acknowledged that school staff did not consistently adhere to this. Changes to the Child's program from what was agreed to by the IEP team must be made by reconvening the team or, at the least, at a meeting with appropriate school staff and the parent at which the changes to the program are agreed to and put in writing in conformance with 14 DE Admin Code § 925.24.4) and corresponding federal regulation.

It is reasonable for a parent of a child with a disability to expect that decisions made regarding strategies, such as those addressed above, will be implemented. In this case they were not. The adverse affect of not adhering to that specific strategy and, in effect, revising the program without agreement, as required, may have been minimal since, unarguably, Child made progress.

CORRECTIVE ACTIONS

1. Student-specific corrective action:

Given that there has been no denial of FAPE (free, appropriate, public education) there is no student specific corrective action.

2. Other corrective action required:

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.*”

In this case, Parent had an expectation through documentation identified as IEP minutes that Child’s required program included a daily folder sent home.

District must ensure that all IEP teams document agreed to supports, strategies, accommodations and modifications in the IEP so Parents have full understanding of the services, supports and strategies that make up the Individualized Education Program.

District must provide the Department with a written report documenting that corrective actions have been completed no later than September 1, 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 that corrective actions must be completed.

By: /s/ Edward Wulkan

Edward L. Wulkan

Assigned Investigator

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