

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

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 12-11**

*(June 20, 2012)*

On or about April 10, 2012, Complainant filed a complaint with the Delaware Department of Education ("DOE") alleging violations of the Individuals With Disabilities Education Act ("IDEA") and corresponding Delaware law with respect to Student.<sup>1</sup> The complaint alleges Prestige Academy, a Delaware charter school, 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 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 an on-site interview school staff, as well as a review of Student's educational records. The investigation also included an interview with Parent by phone.

**FINDINGS OF FACT**

1. Student is currently eleven years of age, and attended Prestige Academy during the 2011-2012 school year as a 5<sup>th</sup> grade student. Student is identified with an "Emotional Disturbance" and in need of special education and related services.
2. Student transferred to Prestige Academy at the start of the 5<sup>th</sup> grade year from another public school district in Delaware.
3. State and federal regulations establish procedures for students with IEPs transferring from one public agency to another. 34 C.F.R. § 300.323; 14 DE Admin Code § 925.23.4. The receiving school must initially place the student in a temporary setting which appears to be most suited to the student's needs based upon a mutual agreement of the parent and the school. Then, within 60 days of the student's first day of attendance at the receiving school, the school must convene an IEP team meeting and either adopt and implement the IEP from the sending school district, or review and develop a new IEP.
4. In this case, it appears Prestige Academy implemented Student's IEP from the prior school district he attended. However, the school also changed his placement at the start of the 5<sup>th</sup> grade school year from the small resource room setting to the general education setting because Student had demonstrated proficiency on a recent assessment in English-

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<sup>1</sup> 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.

language arts and math. There is no record of the IEP team revising the IEP at the start of the school year to change the setting from Placement “A” to Placement “B”. The school violated this procedural requirement of the IDEA.

5. In the 3<sup>rd</sup> and 4<sup>th</sup> grades, Student was assigned to Placement “B” because he needed the structure and small class size in a special education resource room setting to help monitor his behavior. In this complaint, Parent claims Student also needed the small class setting in the 5<sup>th</sup> grade to help with his low-self esteem, behavior, and academic progress.
6. In his 5<sup>th</sup> grade program, Student received instruction in the general education classroom, with the support of a special education teacher. The classroom size was about 20 students, the majority of whom were general education and some special education. The students remained in the same classroom throughout the school day, and the teachers rotated in and out.
7. On or about January 12, 2012, Student’s IEP was reviewed and revised by the IEP team. In addition to an annual review of the IEP, state and federal regulations require schools to also re-evaluate students with disabilities at least once every three years to determine their continued need for special education and related services. 34 C.F.R. § 300.303; 14 DE Admin Code § 925.3.0. In this case, Student’s IEP indicates his last evaluation was conducted on January 29, 2009. The school did not have a full history of Student's educational records. But given the notation on his 3<sup>rd</sup> and 4<sup>th</sup> grades IEPs listing his last evaluation date of January 29, 2009, the school should have attempted to reevaluate Student on or before January 29, 2012. No reevaluation was conducted. The school violated this procedural requirement of the IDEA.
8. Throughout the year, Student clearly displayed a pattern a behavior that interfered with his learning. By January - February 2012, Student had multiple behavior referrals resulting in out of school suspensions, removals from class, in-school suspensions, reprimands, demerits, and suspensions from the school bus. Student's behaviors are described in school records as defiance to school staff and teachers, use of inappropriate and offensive language, refusal to follow directions, and disruption of the educational process. The behaviors are described primarily in behavioral referrals from the classroom teachers and administrators.
9. School staff report that Student was at his best behaviorally in the subject areas he could master. Student's weakest academic area was math, and his behaviors seemed to escalate during math instruction, as well as morning and afternoon homeroom. Student would frequently resort to a behavior as a means of work avoidance, while at other times his behavior was random and unpredictable. The school eventually reassigned Student to another homeroom to pair him with another teacher.
10. Student was struggling academically throughout the year.
11. Student had no individualized behavior intervention plan.

12. The school did not conduct a functional behavior assessment of Student to identify the triggers of his behavior, and the specific settings and events that precipitated Student's behaviors.
13. During periods of instruction, the special education teacher sometimes pulled Student out of the classroom to work in a smaller group setting with other special education students. Other times, Student was removed from class due to his behavior and sent to the Dean's office. The Dean frequently worked with Student one on one during these removals from class. Eventually, Student began asking the classroom teacher if he could leave class to work with the Dean in her office for math instruction. At one point, Student was asking to work with the Dean about three times a week. Over time, it reduced to one time a week. Student responded favorably to working with the Dean and receiving the individualized attention.
14. Student's IEP contains very few behavior interventions and strategies to address the impact of his emotional disturbance on his educational progress. Student's IEP contains a frustration management goal and a work completion goal. The IEP states that Student shall be taught replacement behaviors which will meet the same needs of escape, but there are no individualized behavior interventions or assessments to identify or describe the replacement behaviors Student will be taught.
15. The IEP states that Student's behavior affects his attendance in class.
16. Student received modified assignments, as necessary, extended time to complete assignments, and re-presentation of uncompleted assignments, targeted school staff to "check in", redirection, and breaks from frustrating academic situations. While providing breaks was helpful, there was no documented behavior plan or IEP provision describing how Student would be taught to initiate a break request when he needed it.
17. The school staff described other interventions used with Student which are not identified in the IEP, such as providing Student with prompts and redirection for behavior, reporting daily behavior in agenda book, reassignment of his homeroom, peer tutoring, participation in the Homework Club, additional staff designated to support and mentor Student throughout day, and regular communication with Parent concerning Student's behavior.
18. By mid-February 2012, Student had over 30 documented behavior referrals that resulted in disciplinary actions. There were additional behavioral issues occurring in the classroom that were addressed by the teacher at the classroom level. School staff frequently contacted Parent to discuss the behavior issues. Student also had multiple suspensions from the bus for disruptive and defiant behavior ranging from a one day to one week removal from the bus.
19. On or about February 13, 2012, the school convened an informal meeting with Parent, the Dean, the classroom teacher, and an administrator to discuss Student's placement, behaviors and discipline record. The school did not treat the meeting as an IEP meeting.

20. School staff felt Student was at an extreme frustration level marked by a spike in his behaviors during January and February, and felt a reduced school schedule would give him a break. The school outlined a “45 day plan” that reduced the number of hours Student attended school. Regular school hours are approximately 7:50 a.m. to 4:00 p.m. on Mondays, Tuesdays, Thursdays, and Fridays, and 7:50 a.m. to mid-day on Wednesdays. Under the “45 day plan”, Student attended school for only partial days on Tuesdays from 11:30 a.m. to 4:30 p.m., on Thursdays and Fridays from 7:30 a.m. to 12:30 p.m., and no school on Wednesdays.
21. In this complaint, Parent claims the “45 day plan” was a disciplinary action and she was told to either accept the reduced schedule or Student would be facing expulsion. The school denies the “45 day plan” was disciplinary, and claims it was a strategy to reduce Student’s frustration level and behaviors. The record is not clear. If, however, the school was treating the "45 day plan" as a revision to FAPE and not discipline, the school clearly should have convened the IEP team and properly noticed an IEP team meeting.
22. Student followed the “45 day plan” from approximately mid-February through mid-April 2012. Student’s disruptive and defiant behaviors continued, however, for the periods he was in school. For the three days a week he attended school, the Dean pulled him out of math class and worked with him one on one. In addition, the Dean provided him with individualized instruction in English-language arts during the 45 day period. Otherwise, Student would have to participate in a lower level English-language arts class due to the modification in his school schedule.
23. The school did not provide Parent with prior written notice describing the proposed changes to Student’s educational program and placement under the "45 day plan" as required by state and federal regulations. 14 Del. C. §§ 3133; 3134; 34 C.F.R. § 300.503; 14 DE Admin Code § 926.3.0. The school violated this procedural requirement of the IDEA.
24. On or about April 10, 2012, Complainant filed this complaint with the DOE claiming the school has denied Student FAPE and failed to provide an appropriate program and placement.
25. On or about April 18, 2012, Student completed the "45 day plan" and returned to the regular school schedule. The IEP team also convened to review Student's program and placement. According to the meeting minutes, school staff felt that nothing really changed with Student's behavior during the time his schedule was reduced, and his behaviors continued. Staff also commented that Student "shuts down" and disrupts the educational progress to the point where teaching cannot continue.
26. Between mid-February and the end of the school year, Student accumulated over 25 more behavior referrals, including defiance, inappropriate language, refusal to follow directions, and disruption. Student received additional bus suspensions, removals from class, and in and out of school suspensions.

27. Parent claims Student has made no academic progress, nor has his behavior reduced and it continues to interfere with his learning. The school claims Student has shown some improvement. Student was passing his classes by the end of the school year, and working well with his peer tutor. School staff report that Student is more self-reflective about his behavior and is able to verbally express his feelings more often.

## **CONCLUSIONS**

### ***Rules Regarding IEPs for Transfer Students***

For the reasons stated in Paragraphs 3 and 4, I find a violation of state and federal regarding how and when IEPs shall be in effect for students transferring from one public agency to another under 34 C.F.R. § 300.323 and 14 DE Admin Code § 925.23.4.

### ***Reevaluation At Least Once Every Three Years***

For the reasons stated in Paragraph 7, I find a violation of state and federal regulations requiring that students with disabilities be reevaluated at least once every three years to determine their continued need for special education and related services under 34 C.F.R. § 300.303 and 14 DE Admin Code § 925.3.0.

### ***Prior Written Notice to Parent***

For the reasons stated in Paragraph 23, I find a violation of state and federal regulations requiring the school to provide Parent with prior written notice describing the proposed changes to Student's educational program and placement under the "45 day plan" under 14 Del. C. §§ 3133; 3134; 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0.

### ***Denial of FAPE to Student***

In addition, I find Student was denied FAPE as of January 2012. Students with disabilities are entitled to receive a free, appropriate public education. "FAPE" is defined as specially designed instruction and related services as required to assist a child with a disability to benefit from an education that is provided at public expense, is individualized to meet the unique needs of the child, provides significant learning to the child, and confers meaningful benefit on the child with a disability that is gauged to the child's potential. 14 Del. C. § 3101(5). In this case, Student had significant behavioral challenges stemming from his emotional disturbance that impacted his ability to access his educational program and make meaningful educational progress.

Student needed a comprehensive functional behavioral assessment and an individualized behavior intervention plan developed by trained staff early in the school year. For most of the school year, Student had frequent difficulty remaining in the classroom, complying with directions, and investing in his academic work. When Student remained in class, his behaviors often disrupted him from receiving consistent and effective instruction. His pattern of defiance

and disruptive behavior had an adverse effect on his ability to access his education. Student was struggling academically throughout the year due to his behaviors, but had no individualized behavior intervention plan. Student's IEP contains only two behavior goals, and very few accommodations and interventions to address Student's behavior. While school staff explained there are some interventions and strategies used to respond to Student, they are not documented in Student's IEP or a behavior intervention plan. A behavior intervention plan developed by trained staff would ensure the interventions are implemented consistently across all settings and allow for data collection to track the effectiveness of the interventions. A behavior plan would teach Student the interim and long term skills he needs to effectively reduce his behaviors.

The school also did not conduct a functional behavior assessment ("FBA") of Student to identify the triggers of his behavior, and the specific settings and events that precipitated Student's behaviors. An FBA would be conducted by trained staff to include direct observations of Student and his behavior across all settings, and an objective process to collect and analyze the data based on the behavior observations. The FBA would include a description of Student's behaviors in relation to the activity, the space, the staff present, the noise in the room, and other factors in the environment which may be preferred or non-preferred to Student in assessing the antecedent, the consequence, and the overall function of Student's behavior. The FBA would identify a hypothesis for Student's behaviors based on data, and identify methods to teach Student specific skills to replace his inappropriate behaviors with appropriate responses to address his academic and social-emotional needs.

In addition to the lack of behavioral supports and strategies, the evidence shows Student's program did not meet his educational needs because he required a more restrictive placement, such as a resource room, or other small group setting to assist with his behavior and its adverse impact on the academics. School staff acknowledged Student resorted to behavior to avoid work at times, and it is apparent Student need the higher level of structure and support in a small classroom setting. Student's behaviors caused him to be removed from classroom instruction for significant periods of time and prevented him from meaningfully accessing his educational program.

***For the reasons stated, I find a violation of state or federal regulations regarding the provision of FAPE to Student through an educational program and placement based on Student's needs.***

### **CORRECTIVE ACTION PLAN**

Parent confirmed she does not intend to enroll Student in Prestige Academy for the 2012-2013 school year, and Student will obtain public educational services in another public setting. In resolving a complaint in which the State has found a failure to provide appropriate services, however, the State must address: (a) the failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and (b) the appropriate future provision of services for all children with disabilities. § 34 C.F.R. 300.151

As a result of the DOE's investigation and findings, the DOE directs the school to take the following corrective actions:

**A. Compensatory Instruction**

1. The school shall provide ninety-five (95) instructional hours of one on one instructional services to Student to remedy the denial of FAPE described in this decision.

2. The school may satisfy compensatory service hours through a private tutoring arrangement (reviewed and approved by the school) or through school personnel providing such services to Student, as long as the schedule and location of services are agreed to by Parent.

3. The duty to provide the compensatory instructional hours shall continue until the full ninety-five (95) hours have been provided to Student, and even if Student does not return to Prestige Academy for the 2012-2013 school year. The instructional hours can be provided, in increments, before school, after school, during the summer months or breaks, or other times mutually agreed by the Parent and the school.

4. **By July 30, 2012**, the school shall provide to the DOE a status report describing how and when the compensatory instructional hours will be delivered to Student. The school must maintain a written record to track how and when the compensatory hours are being provided and shall notify Parent in writing when the ninety-five (95) hours have been provided. The instructional hours should be based on Student's areas of academic need.

5. If the school and Parent cannot agree on how the compensatory services will be delivered, either the school or the Parent shall notify the Department.

**B. Additional School Level Corrective Actions**

**On or before November 20, 2012**, the school shall ensure all relevant staff are trained on the following requirements:

1. the requirement regarding when and how IEPs must be in effect for transfer students under 34 C.F.R. § 300.323 and 14 DE Admin Code § 925.23.4;

2. the requirement that students with disabilities be reevaluated at least once every three years to determine their continued need for special education and related services under 34 C.F.R. § 300.303 and 14 DE Admin Code § 925.3.0; and

3. the requirement that parents receive with prior written notice describing any changes related to the provision of FAPE to students as described in this decision and under 14 Del. C. §§ 3133; 3134, 34 C.F.R. § 300.50, and 14 DE Admin Code § 926.3.0.

**On or before December 15, 2012**, the school shall ensure all relevant staff are trained in how to conduct functional behavior assessments, and how to develop individualized behavioral intervention plans, including, but not limited to the use of positive reinforcements and strategies to address student behavior.

In addition, all teachers, special education staff, and school administrators must receive at least four (4) hours of training in working with students with emotional disturbances, the development and use of positive behavior interventions plan, and functional behavioral assessments. The provider of the training must be qualified in the subject area and approved by the DOE's Director of Exceptional Children Resources.

**C. Report to the DOE**

**By December 30, 2012**, the school shall provide the DOE with a report describing the training completed, including a list of the staff who attended the training, the date(s) and time(s) the training was provided; a written description summarizing the specific topics discussed at the training, and a description of who provided the training.

**D. State Verification Review**

Following the completion of all training and local level corrective action, the DOE shall review additional student records, including IEPs, discipline records, and behavior plans, to verify the school has corrected all noncompliance identified in this decision.

By: /s/Jennifer L. Kline \_\_\_\_\_  
Jennifer L. Kline, Esq.  
Assigned Investigator  
Education Associate

Date Issued: June 20, 2012