

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 12-1 (September 18, 2011)

On July 20, 2011, the Disabilities Law Program filed a complaint with the Delaware Department of Education on behalf of Student.¹ The complaint alleges the Brandywine School District (“the District”) violated certain state and federal special education regulations with respect 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.

FINDINGS OF FACT

1. Student is eligible to receive special education and related services under the Individuals with Disabilities Education (“IDEA”) and 14 *Del. C.* § 3101 *et seq.* in the disability category of “Other Health Impairment”.
2. During the 2009-2010 school year, Student attended the 8th grade at the Middle School and received special education services as outlined in her IEP.
3. Student’s 8th grade IEP was developed on January 15, 2010. It focuses on Student’s educational needs in the areas of behavior, math reasoning and computation, written expression, and reading. The 8th grade IEP provides small group instruction and classroom accommodations, including preferential seating, extended time on tests, use of graphic organizers, and other classroom supports to maintain Student’s behavior and time on task. The team determined Student did not require extended school year services over the summer.
4. The 8th grade IEP also addresses Student’s transition from high school to post school employment and describes Student’s goal as: “[Student] will be employed in the medical field”. The transition services and activities to assist Student in meeting the goal are: (a) Student will attend a “Career Days” seminar; (b) Student will look for trade schools that offer training for a chosen career field; and (c) Student will enroll in a career pathway at the high school.

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.

5. The 8th grade IEP further describes Student's post secondary education goal as: "[Student] will attend career training after high school." The transition services and activities to assist Student in meeting the goal are: (a) Student will pass courses needed for graduation; and (b) Student will complete two applications to her program of choice.
6. State and federal regulations require Student's post secondary goals to be based upon age appropriate transition assessments to determine Student's interests and preferences. 14 DE Admin Code § 925.20.2; 34 C.F.R. § 300.320(b). The transition assessments used by the IEP team for Student's 8th grade IEP are: "Information provided by BCS, ["Student's] previous IEP, parent/guardian input".
7. Student did not attend the January 15, 2010 IEP meeting.
8. Student completed the 8th grade at the Middle School and planned to begin the 9th grade at the High School for the 2010-2011 school year.
9. From approximately mid-August to October 2010, however, Student was AWOL. Student was then placed in a detention center with the Department of Services for Children, Youth, and their Families ("DSCYF"), and Youth Rehabilitative Services. Student received educational services and earned high school credits while in the custody of DSCYF.
10. Student remained in the detention center until approximately January 2011. She transferred back to the District and began attending 9th grade at the High School in mid February 2011. At the time, Student was 17.
11. On February 2, 2011, the District held an IEP meeting to discuss Student's transition from DSCYF to the High School, as well as her transportation needs. The District provided Student with a small group instruction ratio and specialized program. Student attended core academic classes in the general education setting with support from her special education teacher or assigned paraprofessional. Student also attended small group academic support classes for reinforcement and re-teaching of academic subjects. Student was closely supervised by adult staff throughout the school day.
12. Student's guardian attended and participated in the February 2, 2011, IEP meeting.
13. The complainant alleges the District was obligated to promptly schedule another IEP team meeting to review Student's IEP, but failed to do so.
14. The District alleges IEP meetings were held on March 9 and March 23, 2011, and a functional behavioral assessment was completed. The complainant alleges the March meetings were not formal IEP meetings, nor did they include a review of Student's IEP.

15. Complainant contacted the District between February and June 2011 requesting an IEP meeting be scheduled to review Student's IEP, and determine Student's need for extended school year services (ESY). However, the 2010-2011 school year ended before an IEP meeting was held to review Student's IEP.
16. On June 24, 2011, the complainant sent the District a letter requesting ESY in the form of tutoring services since the District did not make an ESY determination before the school year ended.
17. In response, the District offered to provide services through the District's summer program focusing on Student's IEP goals and areas of need. The offer was made verbally to complainant by a District representative.
18. Student did not attend the summer school program offered by the District.
19. On July 20, 2011, the complainant filed a complaint with the Department.
20. On August 12, 2011, the District filed a response to the complaint setting forth corrective actions taken.
21. On August 23, 2011, the District convened a meeting to review and revise Student's IEP. Student's guardian attended the meeting. The August 23, 2011 IEP proposes the following:
 - (a) IEP goals in the areas of mathematical computation and reasoning, written expression, reading comprehension, and social skills and behavior.
 - (b) Student to participate in statewide testing and adhere to the code of conduct within her behavior plan.
 - (c) A decision concerning Student's need for extended year services to be made by the IEP team no later than April 20, 2012.
 - (d) Student's placement in a separate special education classroom for a portion of the day for small group academic support from a special education teacher, with placement in the regular education setting for core academics with education support.
 - (e) Transition services and activities related to Student's goal of working in a funeral home, including the completion of a student success plan.
21. Student did not earn the required credits to be considered a sophomore in the 2011-2012 school year. Under the August 23, 2011 IEP, however, Student will attend classes with freshman, as well as other sophomores.

22. In its prior written notice, the District proposed the August 23, 2011 IEP, and the following additional actions:
- (a) A credit review to be completed and reviewed with Student and her guardian by September 30, 2011.
 - (b) The principal of the High School will determine on or before September 15, 2011 whether Student can be awarded a credit for volunteer work completed from May through August 2011.
 - (c) The District will provide an independent evaluation for completion of a vocational evaluation based upon the complainant's requests for specialized assessment tools not available through the District.
 - (d) The District will conduct a reevaluation to determine Student's educational needs by October 15, 2011.
 - (e) The District will provide 60 hours of compensatory instruction to Student. The compensatory services will focus on Student's IEP goals to increase her ability to access the general curriculum.
 - (f) The District will ensure that Division of Vocational Rehabilitation is invited to Student's future IEP meetings.
23. State and federal regulations require students with disabilities to be evaluated at least once every three years, unless the parent/guardian and student agree otherwise. 14 DE Admin Code § 925.3.0; 34 C.F.R. § 303. In this case, Student was last evaluated by the District on May 14, 2008. The District acknowledges it should have reevaluated Student on or before May 2011.

CONCLUSIONS

IEPs for Transfer Students

The complaint alleges the District failed to adhere to special education regulations concerning the review and development of Student's IEP in a timely manner.

State and federal regulations address requirements concerning children who transfer from and to public agencies in Delaware as follows:

If a child with a disability transfers to a new public agency in Delaware, and enrolls in a new school within 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). The new public agency must temporarily place the child in an educational setting which is best suited to the child's needs based on a mutual

agreement of the parents and the receiving public agency. The agreement must be documented by the signatures of the parents and receiving public agency on a temporary placement form or the cover page of the IEP.

Within 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.

14 DE Admin Code § 925.23.4; 34 C.F.R. § 300.323;

In approximately February 2011, Student transferred from DSCYF to the District's High School. The District claims it reviewed the transfer IEP on or about Student's initial attendance in February 2011, and agreed to implement it. There is, however, no documentation of such agreement with the guardian as required by regulation. In addition, the District acknowledges it did not hold a subsequent IEP meeting within the time required by regulation.

Since the filing of the complaint, the District has corrected the noncompliance with respect to Student. An IEP meeting was held on August 23, 2011 and a revised IEP was proposed as outlined in the District's prior written notice.

Triennial Reevaluation to Determine Student's Educational Needs

As mentioned, state and federal regulations require students with disabilities to be evaluated at least once every three years, unless the parent/guardian and district agree otherwise. 14 DE Admin Code § 925.3.0; 34 C.F.R. § 300.303. Student was last evaluated by the District on May 14, 2008. The District did not conduct a triennial reevaluation within the timeline required by regulation.

Since the filing of the complaint, the District has corrected the noncompliance with respect to Student. The District agrees to conduct the required reevaluation to determine Student's educational needs by October 15, 2011. If Student's guardian disagrees with the District's evaluation, the guardian can then request an independent educational evaluation at public expense as outlined in 14 DE Admin Code § 926.2.0 and 34 C.F.R. § 300.502.

Extended School Year Services

State and federal regulations require local school districts to determine when extended school year services are necessary to provide FAPE to students with disabilities. 14 DE Admin Code § 923.6.0; 34 C.F.R. § 300.320. EYS must be provided if a student's IEP team determines, on an individual basis, the services are necessary for the child to receive FAPE. EYS services means special education and related services that are provided to a student with a disability beyond the normal year of the school district in accordance with the student's IEP and at no cost to the parent. Normally scheduled summer school programs may be an option for provided ESY if the program can meet the individual needs of the child as identified in the IEP.

In this case, the IEP team did not convene prior to the end of the 2010-2011 school year to determine Student's individual need for EYS. In June 2011, District representatives verbally offered to provide EYS to Student through the District's summer school program.

As mentioned, the District was obligated to convene an IEP meeting and review Student's IEP following her initial attendance at the High School. The failure to reconvene the IEP team contributed to the lateness in addressing Student's eligibility or need for EY over the summer of 2011.

Since the filing of the complaint, the District has corrected the noncompliance with respect to Student. The District agrees to provide 60 hours of compensatory instruction to Student. The 60 compensatory instruction hours should be provided on a schedule that is agreeable to Student's guardian and the District, and may include compensatory instruction provided in the home setting.

Transition Assessments

State and federal regulations address the requirement for transition planning for students with disabilities. Beginning with the earlier of the first IEP to be in effect when the child turns 14 or enters the 8th grade, or younger if determined appropriate by the IEP team, the IEP must include: (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; (2) the transition services and activities (including courses of study) needed to assist the child in reaching those goals; and (3) the child's strengths, interests, and postsecondary preferences, and plans to make application to high school and career technical educational programs. 14 DE Admin Code § 925.22.0; 34 C.F.R. § 300.320(b) (age 16).

Complainant alleges the January 15, 2010 IEP contains inappropriate employment and education goals, the transition services and activities are not reasonably calculated to assist Student in reaching her transition goals, and the goals and services are not based on age appropriate transition assessments.

Transition assessment data capturing the Student's interests is the common thread in transition planning and it should define the transition goals and services in the IEP, and link directly to the transition services and activities. In this case, the transition assessments described in Student's January 15, 2010 IEP are merely: "Information provided by BCS, ["Student's] previous IEP, parent/guardian input". Student did not attend the January 15th IEP meeting. There is no documented connection among the post secondary goals, the transition services and activities, and the relationship to Student's individualized needs, interests, and preferences. In addition, the post secondary education and employment goals are not based on age appropriate transition assessments as required by regulation.

Since the filing of the complaint, the District has corrected the noncompliance with respect to appropriate transition planning for Student. The August 23, 2011 IEP proposed by the District contains appropriate measurable postsecondary goals based upon age appropriate transition assessments, and services and activities needed to assist Student in reaching her goals.

Other Allegations

The Department's complaint investigation is limited to allegations arising under the IDEA Title 31, Chapter 31 of the Delaware Code, and implementing state and federal regulations. To the extent the complaint alleges additional violations, the claims do not arise under the IDEA or corresponding state law.

Corrective Actions

In resolving a complaint in which the Department has found a failure to provide appropriate services, the Department, pursuant to its general supervisory authority under Part B of the IDEA and corresponding Delaware law, must address the failure to provide appropriate services with respect to the child, and appropriate future provision for services for all children with disabilities. 14 DE Admin Code 923.51.0; 34 C.F.R. § 300.151.

As described below, the District has corrected noncompliance with respect to Student. In order to address the appropriate future provision for services of all children with disabilities, however, the Department directs the District as follows:

(1) By October 20, 2011, provide to the Director of the Exceptional Children Resources Group or designee a written corrective action plan tailored to ensure compliance by staff at the High School with the regulatory areas noted in this decision. A provision of the corrective action plan may include training provided by the Department staff in the area of secondary transition.

By: /s/Jennifer L. Kline
Jennifer L. Kline
Assigned Investigator
Education Associate

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