

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**AMENDED FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 12-4 (December 12, 2011)

On October 12, 2011, the Disabilities Law Program filed a complaint with the Delaware Department of Education on behalf Student.¹ The complaint alleges the Brandywine School District (“the District”) violated certain state and federal regulations with respect to Student.

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 §§ 923.151.0 to 300.153.0.

FINDINGS OF FACT

1. Student is currently 16 years old and was previously identified as a student with a disability eligible to receive special education services as a student with a traumatic brain injury, or “TBI”.
2. Over the past several years, Student was enrolled in different public school districts in Delaware, as well as in the program operated by the Department of Services for Children, Youth, and their Families (“DSCYF”).
3. Records show Student was placed at a detention center in December 2010. Prior to the detention center, records show Student was enrolled in a special school in another public school district.
4. In December 2010, Student’s mother (“Parent”) contacted the school staff to set up an appointment to register Student to attend the High School in the District. The High School requires a registration meeting with parents to discuss and confirm legal residency within the District. In Student’s case, registration appointments were made for January 31, February 2, 7, and 11, 2011. Parent and Student did not attend the scheduled meetings. A visiting teacher then visited Parent’s home on February 14, 2011. No one answered the door and the visiting teacher waited on the porch, finally

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.

leaving a card.

5. Parent and Student eventually appeared at the school on February 17, 2011. At the time, Parent provided the documentation to establish that Student was a legal resident of the District and eligible to enroll and attend the High School.
6. Parent did not have a copy of Student's IEP at the registration meeting on February 17, 2011. She also requested Student's first day of attendance be delayed until February 23, 2011. Student did not, however, attend school until March 1, 2011. No explanation was provided for Student's absence.
7. The evidence shows Student attended school on March 1, 2011, but for only "a couple hours" and then did not return to school until March 23, 2011 at which time she signed in at 9:32 a.m. and signed out at 11:00 a.m. There is no other record of Student attending the High School.
8. The High School's educational diagnostician made several attempts to obtain copies of Student's educational records from the previous school of enrollment. On February 17 and 23, 2011, letters were sent to the previous school and no response was received. On February 22, 2011, a phone call was made to the special education coordinator of the previous school, and no response was received. An additional phone call was made to the Director of Special Education from the previous school district, and no response was received.
9. Between March 1 and March 23, 2011, the High School's educational diagnostician also made several attempts to contact Parent by telephone. The voice mail system was filled, however, and no messages could be left.
10. In the interim, Student turned 16 years of age on April 5, 2011.
11. On or about April 14, 2011, the District filed truancy charges for Student's unexcused absences from the District.
12. According to information provided by the Complainant, Student was in a public day treatment program from May 5 to June 2, 2011, an out-of-state drug and alcohol residential treatment from June 2 to July 1, 2011, and then periods ranging from several days to several weeks at youth detention center in September 2011. There is no other record of Student attending or enrolling in any other program after September 28, 2011.

13. The District described attempts to contact Parent by phone in over the summer of 2011. A letter sent from the High School to Parent on June 20, 2011 was returned by the U. S. Postal Service on June 23, 2011 as not deliverable. According to the Complainant, Student and her family moved in May 2011 resulting in a change to Student's feeder pattern school.
14. In July 2011, Complainant contacted the educational diagnostician at the High School to request Student be evaluated. A request for permission to evaluate was sent to Parent, signed by Parent on August 5, 2011, and returned to the educational diagnostician. The consent for permission to evaluate was then forwarded to the school Student would attend, given her change in address in May 2011.
15. According to the District, a case review was held on August 18, 2011 to address the truancy charges, and Student was ordered to attend school and abide by other court-imposed conditions.
16. According to the Complainant, Parent registered Student at the school within her feeder pattern following her address change in May 2011. Complainant reports that Student attended the school for several days in September 2011. There is, however, no record that Student was registered or had attended any other public school in Delaware during the 2011-2012 school year.
17. This complaint was filed on October 12, 2011.
18. On November 29, 2011, Student's current feeder pattern school contacted Parent and invited her to register Student at the school. An appointment was scheduled for 1:00 p.m. on December 1, 2011. Parent did not attend, nor did she inform school staff she would be unable to attend.

COMPLAINT ALLEGATIONS

The complaint alleges:

- (1) The District failed to follow proper procedures to ensure Student had an IEP in place when transferring to the District on or about February 17, 2011.
- (2) The District failed to conduct a timely evaluation to determine Student's eligibility (or continued eligibility) for special education services

CONCLUSIONS

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 a free appropriate public education 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 signatures of the parents and the receiving public agency on a temporary placement form or the cover page of the IEP must document the agreement. 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 this case, records show Student exited the previous school district on September 17, 2010 and the reason for the exit is coded as: "transfer to [District]". Records also show Student was placed at a detention center until approximately December 2010. Parent did not enroll Student in the District until February 17, 2011 – approximately five (5) months after Student exited from the previous school district and approximately two (2) months after Student exited the detention center. In addition, the District scheduled five (5) appointments with Parent and they were not attended by Parent. Nor did Parent respond to the phone calls, letters, or home visit by school staff. Parent did not provide the District a copy of Student's IEP or other evaluation information, nor did the previous school district provide the records to the District when requested on multiple occasions.

State and federal regulations also require students with disabilities be evaluated at least once every three (3) years, unless the parent/guardian and district agree otherwise. 14 DE Admin Code § 925.3.0; 34 C.F.R. § 300.303. In this case, the District contacted Parent as recently as November 29, 2011, and invited Parent to contact the school to permit the District an opportunity to evaluate Student's needs and determine a program appropriate for her. To date, Parent has not responded.

Based on the evidence provided, Student was not made available for the District to assess Student's needs, conduct an evaluation, or develop an IEP. However, the District's response to Student's habitual absenteeism was minimal and ineffective. The scope of this complaint investigation is limited to the IDEA and its implementing regulations. This decision does not address the District's obligations under 14 Del. C. § 2702 concerning compulsory school attendance and reporting truancy, as warranted.

The Department will contact Student's previous school district to investigate potential noncompliance regarding the transfer of Student's records to the District when requested.

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

Date Issued: December 12, 2011