

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 12-8 (March 22, 2012)

On January 24, 2012, Student's parent 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 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 in accordance with the Department of Education's regulations at 14 DE Admin Code § 923.51.

FINDINGS OF FACT

1. Student is currently 17 years old and was initially determined to be a student with a disability and eligible for special education and related services in September 2011.
2. In a letter dated March 1, 2011, a local children's clinic recommended Student receive a full psycho-educational evaluation as soon as possible to address concerns of Student's declining performance due to AD/HD. The letter was reportedly sent to Student's school on or about March 1, 2011.
3. Parent was informed the School had not received the March 1, 2011 letter. The letter was then faxed to the Educational Diagnostician at Student's school on March 17, 2011. Parent also sent the letter to the District's Coordinator of Pupil Services on March 18, 2011.
4. On May 16, 2011, Parent signed the District's form titled Permission to Evaluate and Individually Assess for Special Education Services. The form states the permission is requested for an initial evaluation of Student, and to administer the "measures of cognitive ability and academic achievement, *receptive language*" (*emphasis added*).
5. In August 2011, a certified school psychologist completed an assessment of Student. The report, dated August 17, 2011, describes the assessment procedures as: record review, parent questionnaire, student interview, Wechsler Intelligent Scale for

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.

Children – Fourth Edition (WISC-IV), Wide Range Assessment of Memory and Learning – Second Edition, Behavior Assessment System for Children – Second Edition, Selected subtests from Test of Written Language – Fourth Edition, Autism Diagnostic Observation Schedule, and the Wechsler Individual Achievement Test – Third Edition.

6. By letter dated September 1, 2011, Parent was invited to attend and participate in an IEP meeting scheduled for September 8, 2011, for the purpose of determining Student's eligibility for special education and related services.
7. Student's initial evaluation and eligibility determination occurred outside the regulatory timeline.
8. On September 8, 2011, the IEP team determined Student was eligible for special education and related services under the disability category of "Other Health Impairment". The meeting notes state: "a speech and language evaluation has been suggested, and [Educational Diagnostician] will follow through with our speech language therapist...".
9. By letter dated September 19, 2011, Parent was invited to attend a second IEP team meeting scheduled for September 27, 2011 to develop an initial IEP for Student.
10. On September 19, 2011, a Speech and Language Evaluation was also completed by the Speech Language Pathologist. According to school staff, the District received consent from Parent to conduct the speech and language evaluation on May 16, 2011 when Parent authorized the initial evaluation of Student, to include cognitive measures, academic achievement, and receptive language.
11. The IEP was then developed on September 27, 2011, and includes special education supports and services to serve Student in his regular classrooms, as well as speech and language services for 60 minutes a month.
12. The District began implementing the IEP developed at the September 27th meeting. However, there is no record of Parent providing consent before the initial provision of special education and related services.
13. Parent frequently expressed concern with Student's program. The District convened the IEP team on at least five occasions between September 27, 2011 and March 5, 2012 to discuss the program.
14. On two occasions, school staff provided Parent with an incomplete copy of the Notice of Procedural Safeguards required by state and federal regulations. When Parent pointed out pages were missing, a complete copy was provided.

15. On March 5, 2012, Parent contacted the District's Coordinator of Pupil Services and advised she was refusing the provision of all special education services for Student.

COMPLAINT ALLEGATIONS

The complaint alleges:

- (1) The District failed to conduct a timely initial evaluation to determine Student's eligibility for special education and related services.
- (2) The District conducted a speech and language evaluation without Parent's informed written consent.
- (3) Parent did not agree with the educational program outlined in Student's IEP.
- (4) The District failed to provide Parent with the required Notice of Procedural Safeguards.

CONCLUSIONS

Allegation #1: Timely Evaluation

State and federal regulations require each public agency to conduct a full and individual initial evaluation prior to the initial provision of special education and related services. An initial evaluation must be completed in "a manner to preclude undue delay." 14 DE Admin Code § 925.2.1. Within 45 school days or 90 calendar days, whichever is less, of receiving parental consent, the initial evaluation must be conducted, and the child's eligibility must be determined at a meeting convened for that purpose. *See*, 14 DE Admin Code § 925.2.3; 34 C.F.R. § 300.301(c).

In this case, the District received parental consent to evaluate on May 16, 2011. The evaluation was required to be completed no later than August 16, 2011, or 90 calendar days from the date consent was received. The District did not complete its initial evaluation until September 8, 2011 and beyond the time required by state and federal regulations. *As a result, I find a violation of 14 DE Admin Code § 925.2.3 and 34 C.F.R. § 300.301(c) with respect to the timely initial evaluation of Student.*

Allegation #2: Speech and Language Evaluation without Parent Consent

State and federal regulations require each public agency to obtain informed written consent from a parent before conducting the initial evaluation of a child, and to also ensure the parent is given an explanation of the evaluation procedures, the assessments to be conducted, and how the results will be used. *See*, 14 DE Admin Code § 925.1.1 and 34 C.F.R. § 300.300(a)(1).

In this case, the District received parent consent to conduct the speech and language evaluation on May 16, 2011 when Parent provided written consent for Student's initial evaluation to include "receptive language". An evaluation of receptive language is an evaluation generally conducted by a speech and language pathologist. ***Therefore, I find no violation of state or federal regulations with respect to a lack of parental consent for Student's speech and language evaluation.***

Allegation #3: Consent to Implement Initial IEP

State and federal regulations require that before the initial provision of special education and related services, the public agency must obtain informed consent from the parent. *See*, 14 DE Admin Code § 925.1.2 and 34 CFR § 300.300(b). In addition, consent for an initial evaluation cannot be construed as consent for the initial provision of special education and related services. 14 DE Admin Code § 925.1.2; 34 C.F.R. §300.300(b)(1).

In this case, there is no record the District received informed parental consent prior to initiating special education and related services to Student. School and District staff acknowledge no written consent was provided before services were initiated. Parent was obviously aware services were being provided and she attended several IEP meetings to discuss and review the services outlined in the IEP. But, state and federal regulations require that parental consent be provided *in writing* prior to the initial provision of special education and related services. *See*, 14 DE Admin Code § 922.3.0 ("Consent"); 34 C.F.R. § 300.9. ***Because the required consent was not provided, I find a violation of 14 DE Admin Code § 925.1.2 and 34 CFR § 300.300(b)(1).***

Allegation #4: Procedural Safeguards

State and federal regulations require each public agency to provide a full explanation of the procedural safeguards available to parents at least one time a year and at other times as specified in the regulations. *See*, 14 DE Admin Code at § 926.4.1 and 34 C.F.R. §300.504.

School staff provided the required safeguards to Parent, but on two occasions, pages were missing. When Parent alerted school staff to the error, complete copies of the document were provided. Additionally, the District informed school staff to destroy all incomplete copies of the document to ensure parents are provided with a complete document in the future. ***Therefore, I find no violation of state or federal regulations with respect to the provision of procedural safeguards to Parent.***

CORRECTIVE ACTIONS

In resolving a complaint in which the Department has found a regulatory violation, 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.

The District has not identified a denial of appropriate services to Student. Therefore, specific corrective action is not required with respect to Student.

In order to address the appropriate future provision for services of all children with disabilities, the Department directs the District as follows:

By April 30, 2012, provide to the Director of the Exceptional Children Resources Group or designee a written corrective action plan outlining the steps to be taken by **June 30, 2012** to ensure compliance by staff at the High School with respect to: (1) the requirement to conduct initial evaluations of students with disabilities within the regulatory timeline; and (2) the requirement to obtain written parental consent prior to the initial provision of special education and related services.

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 the corrective actions must be completed.

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

Date Issued: March 23, 2012