

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 13-3

(October 20, 2012)

On August 21, 2012, Parent filed a complaint with the Delaware Department of Education ("DOE") on behalf of Student.¹ The complaint alleges Family Foundations Academy Charter School ("FFA") violated the Individuals with Disabilities Education ("IDEA") and corresponding state and federal regulations by failing to evaluate Student to determine her eligibility for special education related services. 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 attended the 8th grade at FFA in the 2011-2012 school year.
2. Student is not identified as a student with a disability under Section 504, or the IDEA.
3. In June 2012, FFA notified Parent Student had not met the criteria for promotion to the 8th grade. Student did not pass the academic standards for 8th grade math, and as a result, was not eligible for promotion to the 9th grade.
4. Parent expressed specific concerns to FFA staff and felt she was not informed of Student's struggle in math class. Parent also attempted to enroll Student in a summer school program to allow Student to make up the "credit" for math so she could be promoted to the 9th grade. FFA does not, however, provide a summer school program for this purpose. Parent sought intervention from FFA's school board without success. Parent subsequently enrolled Student in a private tutoring program over the summer providing 30 hours of instruction in math. Parent believed the private tutoring would provide Student with "credit" for math to allow her promotion to the 9th grade. But, FFA refused to promote Student to the 9th grade based on the math instruction she received over the summer.
5. Parent filed this complaint on August 21, 2012. Parent contends FFA failed to accommodate Student's needs resulting from her ADD. Parent claims Student was diagnosed with ADD prior to her enrollment at FFA, and the diagnosis was disclosed on the school's application form at the beginning of the school year. Parent also claims she explained at teacher conferences that Student has a difficult time concentrating and

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.

focusing due to having ADD. Parent claims FFA was aware of Student's condition and failed to properly evaluate her to determine her eligibility for special education and related services.

6. The evidence demonstrates, however, Student received educational benefit and made progress in academic subject areas while attending FFA, with the exception of some areas in math. Student is consistently described by her teachers as cooperative and demonstrating age appropriate skill levels. Student's teachers described Student as a typical 8th grade student. The school staff did not observe Student as having an increased level of distractibility or inattention that interfered with her learning, nor does she lack the ability to focus during instruction and class work. Rather, Student's primary issues are described as being overly talkative, social, and distracted by the presence of peers. There is no evidence Student's teachers or other school personnel expressed concern to supervisory or administrative personnel that Student may be in need special education and related services. Nor is there is any evidence Parent or school personnel requested a special education evaluation.
7. In this complaint, Parent also claims FFA is required to promote Student to the 9th grade based on the private math tutoring she received over the summer.

CONCLUSIONS

A. No Violation of Child Find

Public charter schools in Delaware are subject to the "child find" requirements outlined in 14 Del. C. § 3122. Charter schools are responsible for identifying, locating, and evaluating students with disabilities who may be in need of special education and related services. In this case, however, there is no violation of the "child find" duty. For the reasons stated above, the evidence does not support the conclusion that school officials should have suspected Student had a disability with special education needs requiring a evaluation.

B. Other Non-IDEA Claims

This complaint is limited to allegations arising under the IDEA and corresponding state and federal regulations related to special education. Parent's claim that FFA must promote Student to the 9th grade based on the private math tutoring she received over the summer is outside the scope of the IDEA and state special education regulations.

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

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