

DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION
BRANCH

FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 09-02
December 2, 2008

On October 3, 2008, Parent filed a complaint with the Delaware Department of Education on behalf of her daughter (“Student”).¹ The complaint alleges the Colonial School District (“the District”) violated state and federal laws relating to children with disabilities. Parent alleges the District failed to properly consider Student’s need for extended school year (“ESY”) services for the summer of 2008, thereby denying Student a free appropriate public education (“FAPE”).

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. Specifically, the investigation included on site interviews with the Student Services Director, the School Principal and the School’s Educational Diagnostician, and a phone conversation with Parent. The investigation also included a review of Student’s educational records, including her IEP, meeting minutes, progress reports, and other administrative documents provided by the District.

FINDINGS OF FACT

1. Student is 18 years of age, and attends The Special School within the District. Student is eligible for special education and related services under the Individuals with Disabilities Education (“IDEA”) and 14 *Del. C.* § 3101 *et seq.* Student has an educational disability classification of deaf-blind as outlined in 14 DE Admin Code § 925.6.8.
2. The Special School is a separate special education program administered by the District with an enrollment of approximately 100 students. The Special School is also located in a separate building from other schools in the District.
3. On March 5, 2008, Student’s IEP team developed her current IEP. The team determined Student requires special education and related services in the areas of communication, functional mobility and hand use, recreation and leisure, community, vocational, and academics. In developing Student’s IEP, the team noted Student was eligible pursuant to state law to participate in the District’s summer school program due to her educational disability classification of deaf-blind. Page 7 of Student’s IEP contains a statement entitled “Consideration of Need for Extended School Year Services”, and the team circled “No” in response.

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.

4. The District operates a summer school program at The Special School for eligible students with disabilities. In 2008, the program was administered on Mondays through Thursdays from June 16, 2008 until July 10, 2008. In 2008, *approximately* 200 students were invited to attend the program. One hundred of the students were already attending The Special School. The other 100 students were special education students attending other schools within the District.
5. In Delaware, a specific state law requires educational programs to be conducted on a 12 month schedule for children who are identified as severely mentally handicapped, autistic, traumatically brain injured, trainable mentally handicapped, deaf-blind, and orthopedically disabled. See, 14 *Del. C.* §§ 1703(e) and (f). For students who are deaf-blind, such programs may not exceed 1,282 hours of school attendance and 222 teacher days in length.
6. In addition, the IDEA specifies all special education students may be eligible for ESY services based on their individual needs if necessary to receive FAPE. 34 C.F.R. § 300.106; 14 DE Admin Code §§ 923.6.0 and 925.20.5. ESY services are special education and related services provided to a child with a disability beyond the normal school year in accordance with a child's IEP and provided at no cost to the parent. In determining a child's need for ESY, a school district must consider the child's degree of impairment, the potential regression and recoupment of particular skills outlined in the IEP, breakthrough opportunities, vocational opportunities, and any other rare and unusual extenuating circumstances. 14 DE Admin Code § 923.6.0.
7. Following the March 5, 2008 IEP meeting, Parent questioned whether Student was eligible for ESY services based on her individual needs. On April 30, 2008, Parent met with District officials to discuss the 12 month program requirement for deaf-blind students under state law, and the ESY services available under the IDEA.
8. On May 21, 2008, an IEP team meeting was held at Parent's request to consider Student's individual need for ESY. The District's Educational Diagnostician presented data to the team and reported Student would probably not regress in a particular skill if ESY was not provided. The team determined, however, Student required ESY based on the degree of her impairment, but that Student would receive ESY by participating in the District's summer school program.
9. On June 3, 2008, Parent contacted the School Principal and requested further services for Student, in addition to the summer school program. In particular, Parent was concerned Student would receive no services during the 6 week period between the end of the summer school program and the start of the school year.
10. On June 6, 2008, the District wrote to Parent informing her Student met the eligibility requirements for ESY and the District believed FAPE would be provided to Student through the District's summer school program.

11. On June 16, 2008, Parent wrote to District officials again expressing her concern that Student was deemed eligible for ESY and should receive services in addition to those provided in the summer school program. In response, the District offered to provide 3 additional hours of physical therapy between July 14, 2008 and August 1, 2008.
12. Student completed the District's summer school program at The Special School and received the 3 additional hours of physical therapy when the summer school program ended.
13. During the Department's investigation, District staff reported their general belief that students who are automatically eligible for the District's summer school program pursuant to state law (i.e., 14 *Del. C.* §§ 1703(e) and (f)) are being provided ESY through the summer school program and no further discussion of a student's need for ESY is necessary.

CONCLUSIONS

Parent's letter of complaint generally alleges the District failed to consider Student's individual needs in providing Student ESY over the summer of 2008. While Parent's complaint raises legitimate areas of concern, I find no substantive denial of FAPE to Student.

The "Normal School Year" for Students Identified Under 14 Del. C. §§ 1703(e) and (f) is a 12 Month School Year

The IDEA defines "Extended School Year Services" as special education and related services provided to a child with a disability beyond *the normal school year* of the public agency in accordance with a child's IEP and provided at no cost to the parent. 34 C.F.R. § 300.106(b) [Emphasis added]; 14 DE Admin Code § 923.6.4.

State law establishes the minimum number of hours of school attendance school districts must provide for students each year, and the minimum length of the school day. 14 *Del. C.* § 1049(1). In addition, 14 *Del. C.* §§ 1703(e) and (f) requires that programs be conducted on a 12 month schedule for students who are identified as severely mentally handicapped, autistic, traumatically brain injured, trainable mentally handicapped, deaf-blind, and orthopedically disabled. For deaf-blind students, such programs may not exceed 1,282 hours of school attendance and 222 teacher days in length for purposes of state funding. The 12 month schedule requirement under §§ 1703(e) and (f) obligates school districts to provide some hours of school attendance each month of the year, but allows school districts some flexibility in structuring the calendars of attendance.

As a result of such state law provisions, the "normal school year" in Delaware for students identified under 14 *Del. C.* §§ 1703(e) and (f) is a 12 month school year. The number of hours within the "normal school year" may range between the minimum number of hours in § 1049(1)

and the maximum number of hours in §§1703(e) and (f). By definition, the calendar of attendance for deaf-blind students as selected by the District, including the summer school program, constitutes a “normal school year” and not ESY.

***Students Eligible for a 12 Month Program Under
14 Del. C. §§ 1703(e) and (f) May Require ESY In Order to Receive FAPE***

Students eligible for a 12 month program under 14 *Del. C.* §§ 1703(e) and (f) may receive FAPE through regularly scheduled student days, to include the summer school program, without the need for ESY. On the other hand, such students may require additional services over the summer as a result of their unique needs. In all cases, a school district must determine whether each student requires ESY based on the child’s particular needs. When a student is enrolled in a 12 month program under §§ 1703(e) and (f), a school district must still consider and determine the child’s need for ESY. The determination is made by considering the factors outlined in 14 DE Admin Code § 923.6.0, including the child’s degree of impairment, the potential regression and recoupment of particular skills outlined in the child’s IEP, breakthrough opportunities, vocational opportunities, and any other rare and unusual extenuating circumstances.

No Substantive Denial of FAPE to Student

When Student’s IEP was developed on March 5, 2008, the District did not properly consider nor determine Student’s individual need for ESY. The District mistakenly concluded Student’s eligibility for the summer school program eliminated the need to determine whether Student required ESY to receive FAPE.

After Parent voiced her concerns, however, the IEP team reconvened in May 2008 and properly considered Student’s individual need for ESY. The IEP team appropriately determined Student required ESY based on the degree of her impairment and particular educational needs. In determining the ESY to be provided, the District then incorrectly “labeled” its summer school program as ESY for Student. But, since the IEP team properly considered Student’s individual need for ESY using the factors in 14 DE Admin Code § 923.6.0 and determined Student would, in fact, receive FAPE through participation in the summer school program, I find no substantive denial of FAPE to Student in this case. Student participated in the summer school program and received 3 additional hours of physical therapy when the summer school program ended.

CORRECTIVE ACTION PLAN

As a result of the Department's investigation, the Department directs the District to take the following corrective actions:

1. By February 15, 2009:
 - a. Provide in service training and written guidance to all staff at The Special School clarifying the difference between ESY and the 12 month program requirement under state law (i.e., 14 *Del. C.* §§ 1703(e) and (f));
 - b. Establish procedures for evaluating the effectiveness of this activity; and
 - c. Provide the Department of Education with a copy of the written guidance given to staff members.

2. By July 1, 2009:
 - a. Address each of the activities outlined in the corrective action plan; and
 - b. Provide the Department of Education with a summary of the number of students attending The Special School who receive ESY services in 2009.

By: /s/ Edward Wulkan

Edward L. Wulkan
Assigned Investigator

Date Issued: December 2, 2008