

DELAWARE DEPARTMENT OF EDUCATION

EXCEPTIONAL CHILDREN RESOURCES

STATE COMPLAINT DECISION

DE SC #22-07

Date Issued: May 20, 2022

On March 22, 2022, REDACTED (Student), REDACTED (Father), and REDACTED (Mother, and, together with Father, Parents), filed a complaint with the Delaware Department of Education (Department) on behalf of Student. The complaint alleges REDACTED (School) violated requirements of Part B of the IDEA¹. 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's regulations at 14 DE Admin Code §§ 923.51.0 to 53.0.

The investigation included interviews with Parents, Student, Supervisor of Special Education, Special Education Teacher/Assistant Football Coach, Former Paraprofessional, and Current Speech Therapist. The investigation also included correspondence with Head Lacrosse Coach, a review of Student's educational records, correspondence, and documents provided by Student, Parents, and School. The complaint investigation and decision are based on the specific issues stated in the complaint.

COMPLAINT ALLEGATIONS

The complaint alleges the School violated Part B of the Individuals with Disabilities Education Act (IDEA) and corresponding state and federal regulations as follows:

(1) failing to provide Student with related services, specifically adequate speech, and language services as required by Student's Individualized Education Program (IEP),²

(2) failing to provide Student with supports to participate meaningfully in extracurricular activities, specifically football and lacrosse, and

(3) preventing Parents' and Student's utilization of their procedural safeguards by (a) failing to timely consider a Voluntary Grant of Authority form, and (b) failing to issue a Prior Written Notice upon declining Parents' and Student's requests for an independent educational evaluation.

¹ The complaint decision identifies some people and places generally, 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 complaint decision is released as a public record.

² In accordance with IDEA and corresponding state and federal regulations, the complaint must allege violations that occurred not more than one (1) year prior to the date the Department received the complaint.

FINDINGS OF FACT

I. Provision of Speech and Language Services

1. Student is a REDACTED -year-old REDACTED at REDACTED (School), where Student has attended since REDACTED grade.
2. Student receives special education and related services as a student with a learning disability in reading comprehension, mathematics problem solving, oral expression, listening comprehension, and written expression.
3. Student has received speech therapy services pursuant to Student's Individualized Education Plan (IEP) since REDACTED grade.
4. Student has had several different speech therapists over the last four years. In REDACTED grade, Student's speech therapist was Speech Therapist 1. In REDACTED grade, Student's speech therapist was Speech Therapist 2. Student received therapy from Speech Therapist 3 in REDACTED grade, as well as from September to January of Student's REDACTED grade year. From February to May of REDACTED REDACTED year, it was Speech Therapist 4.³
5. On April 20, 2020, an IEP meeting was held for Student. Minutes from the IEP meeting state that "[Student] is also eligible for speech and/or language services specifically in the areas of language reasoning and in pragmatics, specifically with perspective-talking [sic]/social interpretations."
6. On March 26, 2021, an IEP meeting was held to review the triennial reevaluation. This meeting was adjourned and another meeting was scheduled.
7. On April 19, 2021, an IEP meeting was reconvened to review a reevaluation Evaluation Summary Report (2021 ESR) for Student and develop an IEP (April 2021 IEP). The 2021 ESR documented Student's continued eligibility to receive special education and related services under the educational classification of learning disability.
8. The 2021 ESR indicates that Parent expressed that Student "has difficulties with REDACTED receptive and expressive language." The 2021 ESR contains a summary of Student's performance on the speech and language assessments provided as part of Student's triennial review:

³ While these facts occasionally describe items prior to one year from when this State Complaint was filed, they are inserted for solely for background and history.

“Standardized testing using the CELF-5, and CELF-5 Metalinguistics suggest a significant language impairment in all areas of language. Expressive language and semantic skills appear to be the most challenging for REDACTED whereas Meta-Pragmatic skills are a relative strength.” (Within the ESR, Meta-Pragmatics are defined as “...a measure of a student’s ability to use content and context to make situationally appropriate inferences and to initiate appropriate conversations, given constraints set by word choices and interactive contexts.”)

9. The April 2021 IEP provided for individual speech language services three times a month for thirty minutes per session. The April 2021 IEP also had one language goal:

“When presented with a brief scenario/paragraph/auditory story, Student will demonstrate the ability to derive meaning from the text/story through various language processing tasks (defining words via context, figurative language, multiple meanings etc.) with 70% accuracy when provided with choices or one adult prompt in 2/3 opportunities based on therapist data collection and observation.”

10. The April 2021 IEP also contains the following accommodations, modifications, and supports to address Student’s language needs:

“Student will receive direct speech therapy services by a certified speech-language pathologist to address Language Processing needs. Speech therapy sessions may include: structured language activities, repetition of instructions, verbal reinforcement, use of technology, use of pictures, interactive stories, scaffolding prompting, and modeling of correct response. Language needs will be addressed through both structured and unstructured activities with modeling and cueing fading to increase independence. Teachers can make adjustments as needed. Classroom recommendations include:

- a. Use short simple sentences free from extraneous information when given directions and or instruction.
- b. Define the purpose of the activity before introducing the specific instruction (We are going to learn about...)
- c. Give written and verbal instructions for all tasks, point to written as they are verbalized whenever possible.
- d. Encourage Student to ask for clarification if message is not clear and if REDACTED appears to be confused after instruction is given.
- e. Repeat and or rephrase information, encourage Student to repeat instruction information and rephrase it in REDACTED own words.
- f. Allow Student to use subvocalizations (talking under REDACTED breath) to remember auditory information.
- g. Given Student positive feedback on activities to boost REDACTED self-confidence and reduce REDACTED anxiety when listening to and or participating in tasks that require active listening
- h. Extra response and processing time

i. Frequent exposure and practice of new vocabulary terms

During extracurricular activities, Student will be provided with visual supports to assist REDACTED understanding of the plays, for example a play book. [Student] will receive prompting and reminders and chunking of assignments during practice.”

11. Further, the April 2021 IEP contains a “Language” goal as follows: “When presented with a brief paragraph/story, [Student] demonstrates the ability to derive meaning from the scenario/text/auditory story through various language processing tasks (defining words via context, figurative language, multiple meanings, etc.) with 70% accuracy when provided with choices or one adult prompt in 2/3 opportunities based on therapist data collection and observation.”
12. The Prior Written Notice (PWN) dated April 19, 2021 indicates that Student’s Transition Coordinator spoke with Student about the Age of Consent form (Educational Representative After Attainment of Age 18 form) on March 8, 2021. The form indicates that Student is able to provide informed consent. The form also indicates Student would like to invite Parents to future IEP meetings. The IEP team members, including Student, signed the form.
13. Also on April 20, 2021, Student signed Authorization for the Release of Information form allowing information to be shared with Parents.
14. When the Investigator asked the Special Education Director if the Voluntary Grant of Authority form was discussed, the Special Education Director indicated, “We did not do voluntary grant of authority because there were no concerns by parent, student or staff about REDACTED being able to make REDACTED own decisions.”
15. On April 28, 2021, Parent sent an email to Special Education Director requesting an independent educational evaluation to include speech/language testing based on Parent’s disagreement with the speech component of the triennial reevaluation. That same day, the Special Education Director responded that because Student had attained the age of majority, Parent lacked standing to request an independent educational evaluation and thus, School was not obligated to consider Parent’s request.
16. On May 6, 2021, Student sent an email to Special Education Director requesting an independent speech evaluation: “I will like an independent Valuation in speech at this time. I think it will be helpful in the future. Thank you.”
17. On May 7, 2021, the Special Education Director replied to Student, “Given that the prerequisites for an independent evaluation have not been met, and accordingly, the District is not obligated at present to either fund an independent evaluation, or file for due process to defend a school-based assessment. Your procedural safeguards are enclosed.”

18. On May 18, 2021, Student sent the Special Education Director a follow up email challenging why the prerequisite would not be met and stating, "I disagree with testing in speech (3/26/21)."
19. On May 20, 2021, a PWN was issued stating the District proposed to pay for an independent educational speech evaluation. The School's policy on the independent evaluation process and list of approved evaluators were included with the PWN. Parents chose an independent Speech evaluator who was not on the approved evaluator list and School paid.
20. The independent educational evaluation report (IEE) was completed September 3, 2021.
21. On November 22, 2021, the Special Education Director received a copy of the IEE from independent Speech evaluator.
22. The IEE states, "Despite the language deficits demonstrated by [Student], REDACTED has not received Speech and Language services specific to REDACTED language based needs." (IEE at page 24).
23. The IEE further indicates Student has the following "language based impairments:" Language Processing Disorder, Spoken Language Disorder, Social Communication Disorder, Executive Function Disorder, and Language Based Learning Disability.
24. The IEE provides several recommendations for services, specially designed instruction, supports, further evaluation, and goals.
25. On December 1, 2021, Special Education Director received an email from independent Speech evaluator, containing an amended IEE because the independent Speech evaluator reported: "I realized that under the Present Evaluation section I had listed 'Language Samples.' I did not share language samples on Student's report so I removed this line form [sic] that part of my report. I have attached the updated report. This does not change any of the clinical information or findings held within this report..."
26. Special Education Director provided notice of meeting (NOM) to Parents and Student, for the January 20, 2022 IEP meeting. The NOM indicated that the purpose of the meeting was to: Determine initial or continued eligibility; conduct an evaluation or reevaluation; conduct an annual review of your individual IEP; conduct transition planning; develop, review or revise your IEP if student is found eligible; and consider dismissal from Special Education. The NOM was sent via mail and email on both December 16, 2021 and January 14, 2022. The NOM stated at the top that the meeting type was "*Annual IEP/Reevaluation Eligibility Determination."

27. Further, on January 14, 2022, in addition to the NOM that Parents and Student were sent via email and mail, School also sent via email a draft IEP document, stating “In order to help you prepare for our meeting, we are sending the enclosed information for your review. The IEP document is in draft form for discussion purposes only; copies will be mailed home as well. It is very important to us that we answer any questions or concerns you may have before, during, or after the IEP meeting. We encourage you to review the enclosed draft document(s)...”
28. On January 20, 2022, Student, Parents, Special Education Director, and independent Speech evaluator, together with the rest of the IEP team, met (January 20 IEP meeting) to review the results of the IEE. Information from the IEE was added to the ESR. The IEP team reviewed the new and existing data and agreed the information from the IEE did not change Student’s educational classification.
29. Minutes from the January 20 IEP Meeting reflect Parents both raised concerns about Student’s ability to function in social settings. Specifically, that Student is not able to interpret social situations, bullying that has occurred twice during football, and Student sits alone in lunch room with no social interactions.
30. When the IEP team wanted to proceed into discussing the IEP, Parent requested cessation of the meeting and continuation in two weeks. Minutes reflect that the requested continuation was out of “convenience.” Per meeting minutes, “[Parent] stated REDACTED is only agreeing on a revision to review [Student’s] Speech goals and does not feel we can hold an annual IEP if they do not agree to hold it at this time.” Parent sent an email in advance of the meeting stating that the intent of the meeting was to make revisions for Speech only and that Parents had a time constraint that day and were unable to hold a full annual IEP meeting. Parent request to continue the meeting was not reflected in the PWN.
31. At the January 20 IEP Meeting, the independent Speech evaluator requested time to “review the goals and discuss if they are appropriate.” A discussion ensued about the prior year’s speech goal and why it was written. Student’s then-speech therapist, Speech Therapist 3, stated that the goal last year was created to help Student “understand conversation with REDACTED peers understanding context of conversations and understanding verbal and visual clues.” Speech Therapist 3 continued that the draft new speech goals were made by copying and pasting directly from independent Speech evaluator’s evaluation.
32. Further, at the January 20 IEP Meeting, Parent asked independent Speech evaluator if the goals were appropriate, to which independent Speech evaluator requested more time to review the goals. At this point, Parent again requested discontinuation of the meeting and the sending of a two-week notice to have the annual IEP meeting.

33. The Special Education Director stated that Speech Therapist 3's last day was the following week and the Special Education Director was not sure whether there would be a speech therapist for a meeting in two weeks.
34. On January 27, 2022, shortly after the January 20 IEP Meeting was held, Student's speech therapist, Speech Therapist 3, ceased working at School. Accordingly, the Special Education Director informed Parents that they could not hold a follow up IEP meeting in two weeks because there was no speech therapist. The Special Education Director informed Parents that as soon as a new speech therapist was hired, the IEP meeting would be scheduled.
35. The new speech therapist's -Speech Therapist 4 - first day meeting with Student was March 2, 2022.
36. Student missed ninety minutes of therapy over three sessions during the month of February due to the School's lack of speech therapist. According to Special Education Director, these were the only sessions missed in the entire year prior to the filing of this State Complaint.
37. On March 8, 2022, District issued a PWN stating that additional speech therapy sessions will be provided to Student until the missed time of 90 minutes had been made up.
38. Prior to the April 13, 2022 IEP meeting, Speech Therapist 4 collaborated with independent Speech evaluator to revise the proposed IEP speech goals.
39. On April 13, 2022, an IEP meeting was held. Independent Speech evaluator attended the April 13, 2022. The meeting was started at 1:30 p.m. and had to stop at 3:15 when staff had to leave for the day. The meeting was continued on May 4, 2022. Independent Speech evaluator was not in attendance at the May 4, 2022 meeting.
40. On April 18, 2022, the IEP expired.
41. On May 4, 2022, the Student's IEP team reconvened to conduct the annual IEP meeting.
42. The IEP reflects the addition of two new speech goals:
 - a. Language Processing. "Given a variety of listening activities (e.g. lists of items, words, numbers, sequential directions, details from a paragraph, taking a message, etc...) [Student] will apply/use a memory aid to recall information with 40% average accuracy or greater..."
 - b. Language/Social Communication: "During structured social learning tasks/activities, [Student] can use comprehension of social learning concepts by accurately responding to questions related to social thinking units (sarcasm,

disguised thoughts, nonverbal language, conversation skills, friendship, etc...) with 50% accuracy or greater.”

43. On May 17, 2022, Student’s IEP went into effect without Parents or Student’s signatures.

II. Meaningful participation in extracurricular activities⁴

44. Student is a member of the School lacrosse and football teams.

45. The IEP dated, April 19, 2021 has a check indicating “yes” Student will participate with non-disabled students in extracurricular and non-academic areas. It further states, “Student will participate in all extracurricular and non-academic areas with supports or accommodations as outlined on REDACTED speech needs.” On the language goal page, the IEP further states, “During extracurricular activities, REDACTED will be provided with visual supports to assist REDACTED understanding of the plays, for example, a play book. REDACTED will receive prompting and reminders and chunking of assignments during practice.”

46. On October 15, 2020, Head Football Coach sent Special Education Director an email attaching screen shots of an accommodation they made for Student. The accommodation was providing Student with access to Hudl (an app and a website), which allows Student to see specific plays that the coaches upload. When Student clicks on one of the plays, the play opens as a visual with each player’s responsibility listed.

47. Parent was unaware of this accommodation, stating: “I never had a chance to work with REDACTED on it. Did not receive any correspondence from the coaches about it. It would have been nice because I have a lot of knowledge about football, coming from a football coaching family.” (Email from Parent dated May 19, 2022).

48. Student acknowledges that REDACTED “got Hudl” but that all REDACTED was able to access on Hudl were the game film highlights.

49. On October 20, 2020, Student’s IEP team met and revised the IEP (October 2020 IEP). One of the stated purposes of the meeting was “to discuss #6 extracurricular areas...” Under Data Considerations, Parent requested accommodations regarding football. Parent expressed concerns about Student’s disability and REDACTED receptive and expressive reactions. The October 2020 IEP minutes elaborated further on REDACTED’S concerns. During the first practice, another student told Student to “shut your white ass up.” The kid

⁴ Again, the IDEA and Delaware regulations limit a State Complaint to one year prior to date of filing. The references herein to dates prior to that one year limit are incorporated to provide history and context.

then grabbed Student's face mask and pulled REDACTED to the ground. Student got very frustrated. The coach told the students to stop. On another occasion, Student accidentally stepped on another student's ankle, whereupon the student began to punch Student.

50. In the minutes of the October 20, 2020 IEP, it states REDACTED requested "a printed play book" for Student to study the plays. The Head Football Coach notes that REDACTED has created "something online just for [Student] to review the plays specific for [Student]." Parent asked the IEP team if they could print the actual playbook and was told that it would be looked into.
51. Further, Speech Therapist 3 said in the October 20, 2020 IEP minutes to "mak[e] sure [Student] has access visual and in writing, rehearsed with REDACTED more than a typical student." Ultimately, the IEP team agreed to update the IEP goal for participation in extracurricular and non-academic areas with the supports and accommodations outlined in REDACTED speech needs.
52. On March 7, 2021, Parent sent an email to Special Education Director expressing concern as to how football staff include students with disabilities and notes Student's "track record of not being included."
53. Parent elaborated to this Investigator that what REDACTED meant by Student not being included was:
 - a. "Deterred from going to a team football camp at Salisbury in the Summer sponsored by REDACTED." Specifically, the coach during Student's REDACTED year told Parent that Student should not go, that Student would just be watching.
 - b. "Lacrosse team this year not offering visuals to Student. This is very suspicious because Student would take a playbook. REDACTED is a rule follower. Regardless, the head coach of lacrosse this year ... was REDACTED jv coach who had REDACTED REDACTED junior year in football. So REDACTED knew about REDACTED disability. [That coach] was also at the IEP meeting in October 2020. It was addressed in full detail to REDACTED. The year before I was the coach so I could accommodate REDACTED."
 - c. "Student was a junior and not allowed to suit up for varsity." [sic] According to Parent, Student was on the junior varsity team, but some of the junior varsity players were permitted to "suit up" for the experience especially for juniors on a Friday night game.
54. Minutes from the April 1, 2021 IEP meeting, Parents expressed concerns about Student's language: (1) "[Student] is so literal with what REDACTED sees and how REDACTED conveys it or how REDACTED interrupts [interprets/sic] what is said to REDACTED. Examples were given." (2) Student gets upset and frustrated about what was said.

55. On May 26, 2021, Parent sent Head Football Coach an email requesting permission to volunteer with the team as support for Student.
56. Later that day, Head Football Coach replied that REDACTED will decline Parent's offer to volunteer, and if Student needs a one on one for extracurricular activities, that person should be a District employee.
57. Parent forwarded the email exchange to Special Education Director, asking if the one-on-one support could be provided for Student in Football. Special Education Director replied that it is not in Student's IEP and that Special Education Director did not personally see Student needing this as "REDACTED is not physically impaired." Special Education Director continued that "playing a sport is not part of REDACTED graduation requirements." This was not documented in a PWN.
58. Student believes peers "mess with REDACTED" and make REDACTED "uncomfortable." Student referenced their talking about Student's size and how skinny Student is. Student also referenced the other students talking about REDACTED Parent and Student not knowing whether they are joking. Student says it does not feel like they are joking.
59. School personnel disagree with the categorization that Student has been bullied. The Head Football Coach, who is also a certified special education teacher, and the School's current Athletic Director and former Athletic Director have communicated to this Investigator that they have not witnessed any bullying toward Student.
60. The Special Education Teacher/Assistant Football Coach identified two incidents where Student was picked on, but the Head Football Coach stopped short of calling those incidents bullying. In one, the students from lacrosse were in the locker room and someone hit Student on back of head, whereupon Student then hit back. In the other, Student was called a name to the effect of "string bean." Parent's account of this incident was that Student was pushed without notice in the back and hit REDACTED locker.
61. The head coach for lacrosse (Head Lacrosse Coach), who also was the JV football coach, has coached Student for the past four years. The Head Lacrosse Coach stated that REDACTED has not witnessed any bullying during this time period. The only issue he knows of is a situation when a player stepped on Student's foot while playing football and Student and another teammate were arguing. Because the Head Lacrosse Coach was not at the end of the field where it happened, REDACTED assistant coach spoke with both players. The Head Lacrosse Coach did not see anything else warranting concern and noted that Student "always loved being a part of the team."
62. Parents report the following additional incident: In football, someone moved Student's belongings and equipment from Student's locker to a less desirable locker.

63. Special Education Director reports that no bullying incidents have been reported to the school, no incident reports were filed, and therefore no investigation was conducted.

CONCLUSIONS

1. Denial of FAPE and failure to provide Student with related services, specifically speech and language services as required by the IEP

The IDEA and implementing state and federal regulations require school districts to provide a free appropriate public education (FAPE) to students with disabilities. See, 20 U.S.C. § 1401(9), 34 C.F.R. § 300.101(a), and 14 DE Admin Code § 923.1.2.

“Free appropriate public education means special education that is specially designed instruction, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and related services, as defined by the DDOE rules and regulations approved by the State Board of Education, and as may be required to assist a child with a disability to benefit from an education that:

- (a) Is provided at public expense, under public supervision and direction and without charge in the public school system;
- (b) Meets the standards of the Delaware Department of Education;
- (c) Includes elementary, secondary or vocational education in the State;
- (d) Is individualized to meet the unique needs of the child with a disability;
- (e) Provides significant learning to the child with a disability; and
- (f) Confers meaningful benefit on the child with a disability that is gauged to the child with a disability potential.”

14 Del. C. § 3101(5).

Meanwhile, IEP minutes since at least as far back as April 2020 reflect that Parents have been requesting assistance for Student around social interactions/making friends, etc.

School was on notice by its own speech therapist who conducted the April 2020 evaluation that Student needed pragmatic speech support. However, notwithstanding the IEP minutes acknowledging the need for Student to have pragmatic speech therapy, the goal that was implemented in April 2020 was not pragmatic.

Because this State Complaint can only go back one year, **I find a violation from March 22, 2021 through April 19, 2021 in the School’s failure to adopt a pragmatic and/or social goal for Student.**

The April 2021 IEP had the following language goal: “When presented with a brief scenario/paragraph/auditory story, [Student] will demonstrate the ability to derive meaning from the text/story through various language processing tasks (defining words via context, figurative language, multiple meanings, etc.) with 70% accuracy when provided with choices or one adult prompt in 2/3 opportunities based on therapist data collection and observation.”

Then, in November of 2021, the School received the independent Speech evaluation report that states:

Standardized testing using the CELF-5, and CELF-5 Metalinguistics suggest a significant language impairment in all areas of language. Expressive language and semantic skills appear to be the most challenging for REDACTED whereas Meta-Pragmatic skills are a relative strength.” (Within the ESR, Meta-Pragmatics are defined as “...a measure of a student’s ability to use content and context to make situationally appropriate inferences and to initiate appropriate conversations, given constraints set by word choices and interactive contexts.”

The May 2022 IEP reflects the addition of two goals, and specifically a “Language/Social Communication” goal that meets Student’s need for pragmatic and social communication skill development. **Because the April 2021 IEP language goal failed to adequately address the Student’s needs with appropriate accommodations, supports, and goals, I find a violation from April 19, 2021 through May 4, 2022.**

2. Failure to provide Student with supports to participate meaningfully in extracurricular activities, specifically football and lacrosse

Parents have been expressing concerns about Student’s engagement with football and lacrosse team peers for years. They have requested additional supports for Student to learn the plays at least as early as two years ago in April of 2020. The April 2021 IEP specifically requires visual supports for Student to help REDACTED understand the plays and cites a play book as an example.

On or about October 2020, Student was purportedly provided with online access to discreet plays that coaches would upload for Student as an accommodation and visual support. However, Student did not access this online visual aid. Parents were unaware of this accommodation and therefore were unable to assist Student in accessing the online plays.

Districts are required “to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.” See, 14 DE Admin Code § 923.7.1. This includes athletics. See, 14 DE Admin Code § 923.7.2. Furthermore, the definition of Individual Education Plan says that a child who is determined eligible for special education and related services must have an IEP that includes special education, related services, and supplementary aids and services to be provided to

the student that will enable the student to “participate in extracurricular and other nonacademic activities...” See, 14 DE Admin Code § 925.20.1.5.2

I find that School committed a FAPE violation by failing to follow Student’s IEP requiring supports for extracurricular activities. While coaches provided online support for Student, the failure of School to procedurally ensure that the extracurricular supports were implemented and specifically, that Student and Parents had access to the online visual support, was a violation.

3. Preventing Parents’ and Student’s utilization of their procedural safeguards by (a) failing to timely consider a Voluntary Grant of Authority form, and (b) failing to issue a Prior Written Notice upon declining Parents’ and Student’s requests for an independent educational evaluation.

(a) Voluntary Grant of Authority

The School failed to provide Parents and Student with a Voluntary Grant of Authority one year prior to Student turning 18. This failure led to a three-week delay in May of 2021 when Parents initially asked for an independent educational evaluation and was told Student had to do make the request. Student made the request and was initially told not because the exact language justifying a publicly funded independent educational evaluation was not used.

Delaware regulations provide:

926.20.1: Age of Majority. To assure that children with disabilities who have reached age 18 have an identified decision-maker, which may be the child with a disability, the IEP team shall discuss the potential need for an educational representative during the transfer of rights at age of majority review, and annually thereafter. In determining the need for an educational representative, the IEP team shall consider:

926.20.1.2: A child with a disability with capacity may authorize an adult agent to exercise rights through execution of a power of attorney or a standard voluntary grant of authority form published by the Department of Education.

The School IEP team failed to “consider” the voluntary grant of authority form. Parents and Student were not informed it was an option until it was too late. **Accordingly, I find that School’s failure to consider the VGA form is a procedural violation of FAPE.**

(b) Prior Written Notice

The IDEA requires a prior written notice (PWN) be sent to parents whenever the local education agency (LEA) “proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public

education to the child.” 20 U.S.C.A. § 1415(b)(3). School’s failure to provide a PWN to Parents and Student both upon Parents’ initial request for an independent speech evaluation and Student’s subsequent request, were procedural violations of FAPE. *See, Jalen Z. v. Sch. Dist. of Philadelphia*, 104 F. Supp. 3d 660, 671 (E.D. Pa. 2015). “[A] procedural violation of the IDEA is not a per se denial of a FAPE; rather, a school district's failure to comply with the procedural requirements of the Act will constitute a denial of a FAPE only if such violation causes substantive harm to the child or his parents.” *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 66–67 (3d Cir. 2010) (internal citations omitted). Substantive harm may be found where a procedural violation “results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits.” *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012) (internal citations omitted).

There was a 22-day delay from the time Parents initially requested an independent educational evaluation on April 28, 2021 and May 20, 2021, when the School issued a PWN authorizing payment for the independent evaluation.

I find that although the failure to issue a PWN denying Parents’ and Student’s requests for an independent evaluation is a violation of the IDEA, it does not rise to the level of a denial of FAPE because School ultimately paid for the independent evaluation and even though there was a three-week delay, this was not a substantive harm.

Furthermore, Special Education Director’s response to Parent’s request for one-on-one support for football was that it is not in Student’s IEP and that she does not personally see REDACTED needing this as “REDACTED is not physically impaired.” Special Education Director continues that “playing a sport is not part of REDACTED graduation requirements.” Notwithstanding that Special Education Director is correct that the one-on-one requirement was not in the IEP, **I find that failure to do a PWN denying it is a procedural violation.** *See 14 Del. Admin. C. §. 926.3.1.2.*

c. Other

(1) Parent Minutes Request

Parent alleges that School failed on occasion to send out minutes to the IEP meetings. “A parent, a parent’s authorized representative, or any public agency conducting a meeting, review or conference may take minutes of the meeting, review or conference concerning a child with a disability's free and appropriate public education.” 14 *DE Admin Code* § 926.1.5. School was not required to take minutes. However, that section goes on to state that once the minutes are taken by the school, the school has an obligation to “offer a free digital copy” to the parents. *Id.* School personnel have emailed Parent that minutes from the meetings are not sent out unless the parent requests them. **Because Delaware regulation requires that if a school takes minutes, they must be provided to parents, I find a violation of IDEA but not a FAPE violation.**

(2) Expired IEP

On April 18, 2022, Student's IEP expired. While the IEP team had met April 13, 2022, they failed to finalize the IEP due to time constraints. An IEP must be reviewed at least annually. *See 14 Del. Admin. C. §. 925.11.7.* Accordingly, the team should have issued a PWN acknowledging the expiration of the IEP and noting that the existing one would remain effective until the new IEP was finalized. **While this is a violation of the IDEA and Delaware regulations, I do not find a FAPE violation.**

CORRECTIVE ACTION

To address the regulatory violations noted in this Decision, the Department directs School to take the following corrective actions:

Student Level Corrective Actions

1. The IEP team will calculate and submit how much compensatory education services are owed to Student from March 22, 2021 through May 4, 2022 based on the current IEP. The determination of compensatory education services, calculation of time owed, and timeline for delivery should be discussed with Student and documented. The final plan providing this level of detail should be submitted to the Director of Exceptional Children Resources **on or before June 15, 2022.**

School Level Corrective Actions

1. Review and revise policies, practices and procedures as to how school staff communicates student needs/supports to those staffing extracurricular activities. This must be submitted to the Director of Exceptional Children Resources **on or before September 30, 2022.**
2. On or before September 30, 2022, School shall provide professional development for coaches and extracurricular activity leaders regarding inclusion of special education students, and accommodations and supports. The related documentation (sign in sheet, agenda, copy of handouts and/or PowerPoint, etc.) shall be provided to the Department's Director of Exceptional Children Resources Workgroup **on or before October 15, 2022.**
3. On or before September 30, 2022, the School shall review the regulations related to voluntary grant of authority, prior written notice, and the requirements when meeting minutes are taken and provide professional development to all special education staff and related service providers. The related documentation (sign in sheet, agenda, copy of handouts and/or PowerPoint, etc.) shall be provided to the Department's Director of Exceptional Children Resource Workgroup **on or before October 15, 2022.**

By: REDACTED _____
Assigned Investigator