

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**STATE COMPLAINT DECISION  
DE SC ~~#22-01~~ REVISED DE SC 22-02  
DATE ISSUED: NOVEMBER 9, 2021**

On September 10, 2021, the Delaware Department of Education (DDOE) received a complaint filed by the Student against DDOE, Adult and Prison Education Resources (APER). The complaint alleges APER violated state and federal regulations concerning the provision of a free, appropriate public education (FAPE) to Student under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup> The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to Department regulations at 14 DE Admin Code § 923.51.0 to 53.0.

The investigation included review and examination of records and email communications provided by APER. The Investigator interviewed APER staff and the Student. The decision includes findings of fact that are relevant and material to addressing the complaint issues.

**COMPLAINT ALLEGATIONS**

The complaint alleges that APER violated Part B of the IDEA and corresponding state and federal regulations as follows:

1. APER put a hold on the submission of Certificate of Educational Attainment 3 (CAE3) papers for special education students to review and potentially change the process thus preventing special education students from having their papers evaluated.

**FINDINGS OF FACT**

**A. Special Education in Prison**

1. The Prison Education Program is tasked with providing special education services to eligible students.
2. Since 2000, the DDOE adult education program has been providing special education services to eligible students in prison.

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<sup>1</sup> 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.

3. All students in prison who receive special education services are enrolled in the James H. Groves Adult High School (Groves) and are pursuing their high school diploma.
4. Groves requires students earn twenty-four credits to receive a high school diploma. The credit requirement is the same for a district or charter high school diploma.
5. The Delaware Center for Distance Adult Learning approves the credits for the diploma.
6. On July 13, 2021, Student's teacher (Teacher) submitted, via the Schoology LMS platform, three CEA3 applications and accompanying Argumentative Research Papers for three prison education students (one of which was the Student who filed this state complaint) to APER for review.

**B. CAE 3 Portfolio Process**

7. The Certificate of Educational Attainment 3 (CAE3) is designed exclusively for James H. Groves Adult High School students. It serves as a verification of knowledge and skills and has the endorsement of the DDOE, Office of Adult Education and James H. Groves Adult High School Centers.
8. The CAE3 is a mechanism unique to Groves and the State of Delaware. It allows students in the Groves High School program to demonstrate knowledge and skills and earn up to ten units of credit in content/subject areas required for graduation.
9. The following chart displays how credits can be earned:

**CEA3 Awarding of Credits**

<b>CEA3 Credits Based on Current Graduation Requirements</b>
1 Credit Possible (Math Skills for Everyday Life A/B)
3 Credits Possible (Communications A/B, Literature A/B, Journalism A/B)
2.0 Credits Possible (Environmental Science, Chemistry, Physical Science, Earth Science)
2.0 Credits Possible (World Geography, World History A/B, Economics, American Government)
2.0 Credits Possible Electives
<b>Total: Up To 10 Credits</b>

10. To be awarded a CAE3, a student must: 1) write an argument research paper (minimum of 4 full pages and no longer than 6 pages, double-spaced; 2) use the APA manual, 7<sup>th</sup> edition

style, in the paper; 3) meet competency requirements in reading, mathematics, social studies, science, and writing GED or TABE tests; and, 4) complete the CEA3 portfolio.

11. The CEA3 Portfolio consists of the following: 1) CEA3 Application Form; 2) Topic Selection Form (should have been completed in Comp. A.) signed by the teacher and program administrator; 3) Test Results Form signed by the teacher and program administrator; 4) Argumentative research paper; and 5) Turnitin Report (MUST be less than 20%). It is not necessary for a student to complete the required tests prior to submitting a CEA3 paper. However, a CEA3 portfolio will not be complete, nor will a certificate be issued until all the above components are complete.
12. The completed portfolio is submitted to APER via Schoology for approval. Since the CEA3 portfolio requirements may change from year to year, it is important that the portfolio adheres to guidelines in the most current version of the CEA3 Manual.
13. If a student needs more than one year to complete the CEA3 Portfolio, papers must be reviewed and updated according to the most current CEA3 Manual guidelines.

### **C. Background Information**

14. Student is REDACTED years-old and receives special education services in prison through the James H. Groves Adult High School, which is located at REDACTED
15. Student receives special education services as a student with a Learning Disability according to Student's last evaluation summary report (ESR) dated October 20, 2017.
16. On May 28, 2020, APER reviewed and adopted the ESR dated October 20, 2017 as evidenced by a signature page dated May 28, 2020.
17. The Prior Written Notice (PWN) dated May 28, 2020 states, "The IEP team proposes to continue your special education services under the classification of Learning Disability in the areas of reading fluency, reading comprehension, math calculation, math problem solving, and written expression." It further states, "According to the Delaware Department of Education regulations for students receive special education, the IEP team must review a new student's records in an Evaluation Summary Report meeting to determine continued eligibility for special education services." The PWN does not contain a written description of any other options the IEP Team considered and the reasons why those options were rejected, a written description of other factors which are relevant to the agency's proposal or refusal; or a written summary of procedural safeguards. Rather, the PWN refers to a copy of the procedural safeguards from 2016.
18. On July 2, 2020, Student's IEP was developed. It included goals in the areas of reading comprehension, math, and written expression/CEA3. The reading accommodations included graphic organizers, checks for understanding, use of a dictionary when needed, breaks in

instruction, pre-teach vocabulary, use of notes, read-alouds, extended time, appropriately leveled texts, and growth-based mastery. Student's written expression/CEA3 accommodations included graphic organizers, checks for understanding, use of a dictionary when needed, breaks in instruction, use of writing frames, modified assignments, use of a computer, and teacher assistance planning and editing. The present level of performance for the reading comprehension goal is not measurable.

19. The benchmarks are written using eighth grade level text. However, the student is beyond eighth grade.
20. There is no present level of performance documented for the written expression/CEA3 goal.
21. Student's written/expression/CEA3 annual goal is as follows: "Student will, with the assistance of REDACTED teacher and use of a writing checklist, edit, and revise REDACTED 6-paragraph research-based argument essay, to include an intro, 2-point paragraphs, one counter argument and one rebuttal paragraph, and conclusion. REDACTED<sup>2</sup> will score at or above grade level in each of the five paragraphs according to the approved CEA3 writing rubric."
22. The final benchmark on the IEP goal page should be the same as the annual goal. In this case, the final benchmark and goal are different and inconsistent. The final benchmark speaks to a 5 paragraph writing piece and the annual goal first refers to a 6 paragraph writing piece and then to a 5 paragraph writing piece which is inconsistent.
23. On June 1, 2021, it is noted on the IEP that Student "met and exceeded" this goal.
24. On July 8, 2021, another IEP was developed (current IEP) and includes goals in the areas of reading and math. The reading goal targeted reading comprehension and included accommodations for using a graphic organizer, checking for understanding, use of dictionary, breaks in instruction, pre-teaching vocabulary, use of notes, extended time, appropriately leveled texts, and growth-based mastery. There is no goal for written expression in the current IEP.
25. The present level of performance, benchmarks and goal for reading comprehension refers to "an appropriately leveled text," which is not measurable.
26. The PWN from July 8, 2021 indicates that Student needs supports in math problem solving and written expression in Section 2. In Section 4 it states, "The IEP team rejected including a writing goal because have satisfied the writing requirements for the composition and research course and have demonstrated exemplary growth in written expression skills."

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<sup>2</sup> Student's name in this matter is not "REDACTED." Reference to "REDACTED" in Student's goal is an error.

27. On July 13, 2021, Student's Teacher submitted, via the Schoology platform, three CEA3 applications and accompanying Argumentative Research Papers for three prison education students (one of which was the Student who filed this state complaint) to APER for review.
28. An email that was included along with the submission to APER identified that (a) Student was eligible for special education, and (b) the submitted application contained the IEP goal from July 8, 2021, which listed accommodations for reading, which did not apply to any testing nor writing expectations.
29. On August 17, 2021, the Educational Diagnostician (ED) at REDACTED, contacted APER to inquire about the status of the CAE3 application and paper reviews. Teacher was on medical leave during this time and the ED was following up in the Teacher's absence.
30. On the same day, APER Teacher of Curriculum (Teacher of Curriculum) replied indicating that a response to the submission was provided to the Supervisor at REDACTED on July 30, 2021. The response indicated that the papers were not loaded in the proper format and the files could not be opened.
31. On August 17, 2021, the Teacher of Curriculum, responded to the ED's email communication providing directions for resubmitting the Argumentative Research Paper, TurnItIn Report, and the application in the appropriate file and format.
32. Also on the same day, the ED reloaded the necessary documents into Schoology in the correct format.
33. On August 17, 2021, APER CEA3 Reviewer (Reviewer) responded by email indicating that the Reviewer found the file. Reviewer originally could not find the file. The Reviewer asked why the application and Argumentative Research Paper included IEP goals.
34. On the same day, the ED responded by email stating that in the case of a different prison education special education student, staff were told to provide the students' IEP goals with submissions made for student's eligible for special education services and they were following that process for the current prison education special education student. The ED reported their belief that, "... it was so that there was no confusion as to why there were modifications" for the CEA3 paper review.
35. On August 18, 2021, the APER Education Associate (Education Associate), sent an email to the ED, Supervisor, Teacher of Curriculum, and Reviewer, requesting a pause on the review process for this Student's paper and on other potential papers submitted from students eligible for special education.
36. The Education Associate indicated in the email that the pause was intended to "decrease some of the uncertainty regarding students with disabilities and the CEA3 process." The

Education Associate stated, “[W]e’d like to have some guidelines in place to support students and staff.”

37. On August 19, 2021, Teacher sent an email (the “August 19 Email”) to the ED, Education Associate, Teacher of Curriculum and Reviewer, indicating that the “process for the special education students needs to be solidified” because special education students need to be in the Groves’ high school diploma track, which requires the CEA3 Portfolio.
38. Furthermore, in the August 19 email, Teacher questioned the equitability of changing the submission procedure while there were papers currently in the review process.
39. Teacher notes in the August 19<sup>th</sup> email, that in a previous situation when a special education student submitted a CAE3 paper, the prison education staff were told by the APER administration that a CEA3 specific goal needed to be written into a student’s IEP. Furthermore, the goal needed to be included in the submission documentation and that the reviewers needed to be notified when a submission to be reviewed was that of a special education student. Teacher said that the Argumentative Research Papers and associated applications submitted in July should be processed without delay. Teacher said that any change in process that might be developed should apply for students submitting applications for review in the future.
40. On August 23, 2021, the APER Administrative Assistant notified the Supervisor that the Student’s paper was being returned because the initial review indicated application and formatting errors that needed correction and the administrator’s signature was needed on the application.
41. On August 24, 2021, the Supervisor sent an email to the Teacher and ED that the Supervisor had spoken with Teacher of Curriculum who indicated that “it would be likely that the APER administration and CEA3 reviewers would meet at some point the following week to discuss guidelines/process for supporting students receiving special education services.”
42. On August 25, 2021, the Supervisor contacted the Teacher and ED by email indicating that the papers needed to be resubmitted with the formatting fixed and with a signature from the program administrator on the applications. In the email the Supervisor stated, “We are on hold, though, until getting a response back from the team regarding the process for students with accommodations to ensure all is done as they direct.” The Supervisor also stated there were “other issues” with the papers that the Supervisor would like to address with the Teacher and ED.
43. On August 25, 2021, the Teacher responded to the email asking the Supervisor to share the concerns prior to the meeting, to prepare for the discussion.

44. On August 27, 2021, the Supervisor responded to both the Teacher and the ED with a lengthy email detailing the grammatical and content concerns that the student would need support with correcting.
45. On August 27, 2021, the ED responded to the Supervisor in an email indicating that the ED believed a number of the Supervisor's writing concerns were "personal preferences" that may not reflect the student's "demonstration of standard achievement." The ED stated in the email, "If this is the process that we will have to follow for papers to be submitted, where we are literally rewriting a spec ed students work regardless of modifications made to ensure equity, then I also suggest that is shared with the panel who is reviewing the process."
46. On the same day, the ED also sent an email to the Education Associate and Teacher of Curriculum, indicating "REDACTED is uncomfortable with the amount of corrections that we would be required to dictate to the student to resubmit. This was discussed with a previous student's work .....the expectation appears to be perfection which, from a legal standpoint is problematic."
47. On August 31, 2021, the Teacher emailed the Supervisor they had expressed "discomfort" with asking the students to make those level of edits. The Teacher suggested that if that level of correction was being required, then the Supervisor should do that directly with the students.
48. On September 13, 2021, the ED sent an email to the APER Director (Director) asking about the status of the resubmission, indicating that all applications and papers must now go through the Supervisor before submission. The ED expressed concern about the Supervisor's expectations/specifications for the paper and notes that the Supervisor is not a certified high school English teacher or special education teacher.
49. On the same day, the ED sent an email to the Education Associate, and carbon copied the Teacher of Curriculum, asking if the papers would be reviewed. The Teacher of Curriculum responded to the ED that the papers would be reviewed for content when they have been resubmitted and pass the CEA3 initial review.
50. On September 13, 2021, the Education Associate sent an email to the ED indicating that the CEA3 papers with formatting issues could be resubmitted and that the "the opportunity to do so was always there."
51. Also on the same day, the ED asked the Teacher of Curriculum for clarification about the modification process and the Teacher of Curriculum responded the same day that "the modification application is a separate question that I can't answer."

52. On September 23, 2021, the Supervisor sent an email to the ED requesting that the ED complete the Delaware Adult Education Accommodations Manual “Accommodations Request Form” for the Student so the Supervisor could sign and send to APER for review.
53. This was an addition to the process that was introduced by the Supervisor at the direction from the Education Associate.
54. During the week of September 28, 2021, the Supervisor planned to meet directly with the Student to assist the Student with making corrections to the paper for resubmission.
55. On September 30, 2021, the ED sent an email asking the Director whether the accommodations request form was needed for the Student, indicating that “this was not the process at the time the papers were originally submitted.”
56. On the same day, the Director responded indicating that the ED should “follow your supervisor’s request.”
57. On October 4, 2021, Student signed a Request for Accommodations form as outlined in the Delaware Adult Education Accommodations Manual. The Instructional Accommodations list included graphic organizers, use of writing/note frames, and modified/reduced assignments. Test Accommodations included extra time, teacher assistance planning and revising, and leveled reading and math expectations. The second page of the request form included opportunities to list additional Instructional Accommodations and Test Accommodations. No requests were noted under Test Accommodations. The following were listed under Instructional Accommodations: extra time, leveled reading material, use of calculators, use of manipulatives, and scaled questioning.
58. The IEP sent with the Request for Accommodations was the previous IEP dated July 2, 2020, rather than the most recent IEP dated July 8, 2021. The July 2, 2020, IEP has the written expression/CAE3 goal, as well as accommodations and modified assignments listed. Next to the IEP benchmark 6, it is written that Student “met and exceeded” the benchmark on June 1, 2021.
59. The IEP dated July 2, 2020, submitted with the Accommodations Request had “Written Expression/CEA3” written in the IEP section, “Unique Educational Needs and Characteristics.”
60. On October 6, 2021, the Education Associate indicated in an email that draft guidelines had been developed by the APER to support instructors and students with disabilities to request accommodations while completing the CEA3 research paper. The guidelines are not yet finalized and have not been implemented. The APER will be requesting the Delaware Department of Education’s Exceptional Children’s Resources Work Group to review them.



61. In the October 6 email, the Education Associate indicated that the “pause” in submission of papers for content review was “unpaused” on September 13, 2021 and referred to an email sent by the Teacher of Curriculum, dated the same day that said, “Once the papers have been revised to meet the formatting criteria, they can be resubmitted in the appropriate folder. Nothing else has changed. Once these papers are resubmitted, they will be read for content. The modification application is a separate question that I can’t answer.”
62. Student’s portfolio was resubmitted in Schoology on October 15, 2021, for review.

## CONCLUSIONS

### **A. APER’s failure to grade Student’s CAE3**

APER instituted a policy in 2000 that high school students eligible for special education who become incarcerated or detained in a Delaware correctional facility and express a desire to continue to pursue their education to obtain a secondary education certificate, must enroll in the James H Groves High School Education program. APER instituted a policy in 2000 that high school students eligible for special education who become incarcerated or detained in a Delaware correctional facility and express a desire to continue to pursue their education to obtain a secondary education certificate, must enroll in the James H Groves High School Education program. These students are not eligible to pursue a GED®.

When APER became responsible for the prison education program in 2000, it did not establish or institute any additional programmatic requirements for students eligible for special education to complete their high school degree requirements in the Groves program. In September 2020, the APER adjusted submission procedures for a different student eligible for special education who submitted a CAE3 portfolio for review. In that situation, the Education Associate requested that the prison ED and Teacher submit a “written expression goal page as well as the CEA3 writing goal page which supported the needs of the research process.”

In September 2020, APER notified the prison education staff at REDACTED that the staff needed to hold an IEP meeting to include a CEA3 goal to a student’s IEP that would include CEA3 benchmarks. The goal and benchmarks were noted to be approved by APER. It does not appear that these changes in the CEA3 submission process for students eligible for special education were formally adopted. A review of the CEA3 manual in place at the time of the Student’s complaint, did not contain any reference to policies or procedures that were different for a student eligible for special education submitting a CEA3 portfolio nor was there any indication that the CEA3 assessment could be modified.

The Student in this complaint had an Individualized Education Plan (IEP) that was developed on July 8, 2021. The IEP had two goals, one in math and a second in the area of reading comprehension. The reading comprehension goal included a list of accommodations to support the Student’s reading comprehension work. There were no needs noted in the Student’s Prior Written Notice, nor in the Student’s IEP that addressed written expression skill development and no goals were developed in this area.

Under the IDEA, states receiving federal education funds, must provide children with disabilities within the state with a free appropriate public education (FAPE). 20 USC § 1412. Delaware state law defines FAPE as:

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 Department of Education 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 Department of Education as set forth in this title or in the rules and regulations of the Department as approved by the State Board;
- 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’s potential.

The IEP is the primary mechanism for the delivery of FAPE. The IDEA and state and federal regulations set out what must be contained in an IEP. “Each IEP must include an assessment of the child’s current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide.” *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012) (internal citations omitted). Although, the IDEA does not define accommodations or modifications, it does state in relevant part as follows:

§300.320, Definition of individualized education program, [6](i), A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district assessments consistent with section 612(a)(16) of the Act; and (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why – (A) The child cannot participate in the regular assessment; and (B) The particular assessment selected is appropriate for the child.

The Delaware Title 14 Education Administrative Code, in its definition of an IEP, states that:

*“A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Individuals with Disabilities Education Act; and if the IEP team determines that the child shall take an alternate*

*assessment, instead of a particular regular State or district wide assessment of student achievement, a statement of why the child cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the child.”*

The Student’s July 8, 2021 IEP contains references to accommodations that address the Student’s capacity to participate in and complete requirements for high school academic work. The Student’s July 8, 2021, IEP does not include any statement that the Student cannot participate in the regular CEA3 assessment process and meet the established requirements of the CEA3, nor is there a statement that an alternate assessment would be more appropriate.<sup>3</sup> Quite simply, Student submitted a CEA3 requesting modifications to the regulation assessment processes which his current IEP said he no longer needed. APER’s failure to grade a submission that did not meet the established requirements of the CEA3 process does not violate the IDEA. APER may have violated the IDEA by failing to properly provide the Student accommodations to do the work required for the CEA3 submission, that aspect of the complaint is explored more fully in Section B.

To the extent Student alleges that APER’s placement of his coursework on “hold” was discriminatory, the IDEA does not address disability discrimination. Allegations of disability discrimination may fall under the purview of the Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act or other statutory or regulatory provisions all of which are outside the jurisdiction of this state complaint investigator. **For these reasons, I find no violation of the IDEA or applicable state law, federal regulations or state regulations.**

## **B. APER’s procedural errors**

APER must comply with the IDEA’s procedural requirements. “[C]ompliance is not a goal in itself; rather, compliance with such procedural requirements is important because of the ‘requirements’ impact on students’ and parents’ substantive rights.” *Ridley Schl. District. V. M.R.*, 680 F.3d260, 274 (3d Cir.2012). Therefore, failure to comply with procedural violations alone will not be actionable under the IDEA, “[a] procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits.” *Id.* (citing *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525–26, 127 S.Ct. 1994, 167 L.Ed.2d 904 (2007)) (second citation omitted).

### 1. Evaluation and Eligibility

Various pieces of documentation were included as part of the accommodation request that Student signed on October 4, 2021. More specifically, there was an evaluation summary report (ESR) dated October 20, 2017 with a signature page dated the same. Also included was an ESR signature page dated May 28, 2020. The Prior Written Notice (PWN) dated May 28, 2020 states, “The IEP team proposes to continue your special education services under the classification of Learning

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<sup>3</sup> Teacher submitted student’s July 7, 2020 IEP with his CEA3 to request modifications. The July 7, 2020 IEP did include written expression and CAE3 goals and modified assignments. But by the time of submission, the July 7, 2020 had been replaced by the July 8, 2021 IEP.

Disability in the areas of reading fluency, reading comprehension, math calculation, math problem solving, and written expression.” It further states, “According to the Delaware Department of Education regulations for students receive special education, the IEP team must review a new student’s records in an Evaluation Summary Report meeting to determine continued eligibility for special education services.” It appears that the meeting was to adopt the ESR.

A reevaluation may occur not more than once a year, unless the parent and the public agency agree otherwise; and shall occur at least once every three (3) years, unless the parent and the public agency agree that a re-evaluation is unnecessary. *See* 34 C.F.R. §300.303(b); 14 DE Admin Code §925.3.2. The last evaluation occurred on October 20, 2017. **Therefore, I find a violation with the re-evaluation timeline requirement.**

## 2. Individualized Education Program

An IEP dated July 2, 2020 was also submitted with the accommodation request form. The “Unique Educational Needs and Characteristics” is written as “Written Expression/CEA3.” A CEA3 paper is not an educational need as defined by federal and state regulations. IDEA identifies annual goals as needing to be designed to “meet the child’s needs that result from the child’s disability and to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child’s other educational needs that result from the child’s disability. *See* 34 C.F.R. §300.320 (a)(2)(i); 14 DE Admin Code §925.20.1.4 **The CEA3 is a course paper assignment and not a need. Consequently, the IEP does not meet IDEA regulations for a written IEP that “meets a child’s needs” (§300.320 (a)(2)(i)(A).** The regulations state the IEP must contain a statement of the child’s present levels of academic achievement and functional performance. *See* 34 C.F.R. 300.320(a)(1); *See* 14 DE Admin Code §925.20.1.1. There is no present level of performance for the written expression goal. In addition, the last benchmark on an IEP goal page should be the annual goal. In this case the goal is different and inconsistent. The final benchmarks speaks to a 5 paragraph writing piece and the annual goal first refers to a 6 paragraph writing piece and then to a 5 paragraph writing piece which is inconsistent. In addition, another student’s name is used rather than the Student for whom the IEP is written. The last benchmark and the annual goal should be the same and they differ. **Therefore, I find a violation of federal and state regulations**

The July 2, 2020 IEP also has a reading comprehension present level of performance that is not measureable. The benchmarks for the reading comprehension goal are written using eighth grade level text. However, the student is in high school. **Therefore, I find a violation of federal and state regulations.**

The Student’s most recent IEP dated July 8, 2021, contains a reading comprehension goal. However, in the IEP, the present level of performance, benchmarks and goals refer to the Student using “an appropriately leveled text.” This is not measurable. **Therefore, I find a violation of federal and state regulations.**

### 3. Prior Written Notice

A PWN was completed as a result of the ESR review on May 28, 2020. According to 14 DE Admin Code §925.3.2, content of the PWN must include the following:

- a. A *written* description of the action proposed or refused by the agency; and
- b. A *written* explanation of why the agency proposes or refuses to take the action; and
- c. A *written* description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; and
- d. A *written* statement that the parents of a child with a disability have protection under the procedural safeguards of *state and federal* regulations and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- e. Sources for parents to contact to obtain assistance in understanding the provisions of these regulations, *including contact information for parent assistance programs, legal assistance programs, and the Delaware State Bar Association*; and
- f. A *written* description of any other options the IEP Team considered and the reasons why those options were rejected; and
- g. A *written* description of other factors which are relevant to the agency's proposal or refusal; *and*
- h. A *written summary of procedural safeguards must be available to the parents under state and federal law and regulations.*

The PWN dated May 28, 2020, does not include items f, g, or h. In the same PWN, section six, the Resources section refers to a copy of the procedural safeguards from December 2016. The most current version of the procedural safeguards at the time would have been July 2019. **Therefore, the PWN is out of compliance with IDEA §303.503 - Prior notice by the public agency; content of notice and §303.504 Procedural safeguards notice.**

A PWN was completed on July 8, 2021 as a result of the development of the IEP. Section 2 of the PWN indicates Student needs supports in math problem solving and written expression. In Section 4 it states, "The IEP team rejected including a writing goal because you (the Student) have satisfied the writing requirements for the composition and research course and have demonstrated exemplary growth in written expression skills." It is contradictory that Student needs supports in written expression yet a writing goal is not needed.

APER's procedural failures will only rise to the level of an IDEA violation if they resulted in "a loss of educational opportunity for the student, seriously deprive[] parents of their participation rights, or causes a deprivation of educational benefits." *Ridley Schl. District. V. M.R.*, 680 F .3d260, 274 (3d Cir.2012). APER's procedural violations resulted in confusion over Student's needs, goals, proper accommodation and whether Student needed a modification for the CAE3 or if indeed, it was even possible for the CAE3 to be modified. The Student did not submit a CEA3 paper that met the standard requirements necessary for the assignment and then was "put on hold" for several months. **For these reasons, I find that APER's procedural failures resulted in a loss of educational opportunity and deprivation of educational benefits such that they resulted in a violation of the IDEA, applicable state law and federal or state regulations.**

## **CORRECTIVE ACTIONS**

- 1) APER will begin the process of reviewing, evaluating, revising, and clarifying the CAE3 policies, practices, and procedures surrounding whether accommodations and/or modifications are allowed. An action plan to complete this task, as well as a progress update should be submitted to the Director of Exceptional Children Resources by **December 2, 2021**.
- 2) By **February 7, 2022**, APER will complete a re-evaluation of the Student and hold a meeting to determine eligibility to meet IDEA regulations for re-evaluations. APER will submit the Evaluation Summary Report to the Director of Exceptional Children Resources by **February 11, 2022**.
- 3) By **February 7, 2022**, APER will hold an IEP meeting to revise the IEP as based on the needs identified in the evaluation. APER will also revise the IEP to ensure the following:
  - a. Student's present levels of academic achievement and functional performance are measurable.
  - b. Goals reflect Student's needs that result from the student's disability
  - c. Statements of measurable annual goals that are the same as the last benchmark of each goal
- 4) APER will also completely address each section of the Prior Written Notice and include all required content for both the eligibility meeting and the IEP meeting and provide a copy to the Director of Exceptional Children Resources by **February 11, 2022**.
- 5) Based on any additional needs identified by conducting the evaluation and revising the IEP, the IEP team will determine if compensatory education services are owed to Student. The determination of compensatory education services, calculation of time owed, and timeline for delivery should be discussed with Student and documented in a PWN. The PWN providing this level of detail, as well as IEP should be submitted to the Director of Exceptional Children Resources by **February 7, 2022**.
- 6) By **December 1, 2021**, APER will provide a detailed plan to the Director of Exceptional Children Resources addressing how APER will train all APER staff (administrators, teachers, and educational diagnosticians) on the regulatory requirements for which violations were cited in these findings including the following:
  - a. prior written notice
  - b. the timeline for re-evaluations
  - c. developing IEPs that comply with state and federal
  - d. identifying needs areas
  - e. developing measurable PLEPs
  - f. difference between accommodations and modifications.

The professional development must be completed and the related documentation (sign in sheet, agenda, copy of handouts, copy of power point, etc.) must be provided to the Director of Exceptional Children Resources by **December 17, 2021**.