

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
STATE COMPLAINT RESOLUTION**

DE SC 20-04 (January 7, 2020)

On November 8, 2019, Parent filed a complaint with the Delaware Department of Education (Department). The complaint alleges that the School District (District) violated Part B of the Individuals with Disabilities Education Act (IDEA) and implementing state and federal regulations with respect to Student. The complaint has been investigated as required by federal regulations at 34 C.F.R. § 300.151 to § 300.153 and according to the Department’s regulations at 14 DE Admin Code § 923.51.0 to § 923.53.0. The investigation included a review of Student’s educational records, staff correspondence, and documents provided by Parent and the District related to the issues in the complaint. Interviews were also conducted with Parent and relevant District staff.

COMPLAINT ALLEGATIONS

The complaint alleges the District failed to provide Parent with an adequate written report of the physical restraint used on Student on October 29, 2019 in violation of the Department’s regulations at 14 DE Admin Code § 610.5.0 and § 610.6.0. The complaint further alleges the District failed to implement the behavior supports and interventions Student required resulting in Student’s behavior escalation on October 29, 2019 and the use of physical restraint.

FINDINGS OF FACT

1. Student is X years of age and enrolled in the X grade at School (School). Student is identified as a student with a disability under the classification of Autism as defined in 14 DE Admin Code § 925.6.6. Student receives special education and related services at the School pursuant to the IDEA and 14 *Del. C.* § 3101 *et seq.*

2018 – 2019 School Year

2. Student’s current individualized education program (IEP) was developed at an IEP Team meeting held on February 15, 2019. Student’s IEP is dated February 25, 2019 to February 24, 2020.
3. Pursuant to the IEP, Student’s educational needs are in the areas of identifying and decoding words, reading comprehension, written expression, and math operations and algebraic thinking. Student receives occupational therapy services focusing on fine and visual motor skills, and self-care needs. Student also receives speech and language therapy for conversational skills and peer interaction. Student receives small group and one-to-one instruction focusing on Student’s areas of educational need.

4. The IEP Team also determined Student's behavior impedes Student's learning and the learning of others, and Student requires positive behavior interventions, supports, and services.
5. The IEP includes behavior interventions and supports with behavior goals focused on compliance, completing tasks, and self-monitoring behaviors.
6. The IEP Team determined Student's educational needs could be met in the general education setting, or the A setting. Student participates in the regular education setting greater than eighty percent (80%) of the day.
7. Throughout the 2018 – 2019 school year, the School held IEP Team meetings to review and revise Student's IEP and proactively address Student's challenging behaviors.
8. An IEP Team meeting was held on March 21, 2019 and the IEP Team decided to develop a behavior intervention plan from the behavior goals in Student's IEP. The proposed behavior intervention plan had the same supports and strategies outlined in the IEP.
9. Subsequent IEP Team meetings were held on April 1, 2019 and April 30, 2019 to review present levels of performance, revise IEP goals and benchmarks, and address and respond to Parent's requests and concerns.
10. On May 10, 2019, the School sent written notice of a May 28, 2019 IEP Team meeting to Parent in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
11. Parent requested the May 28, 2019 IEP Team meeting to revise Student's IEP.
12. The prior written notice, (PWN), dated June 7, 2019, provides in relevant part:
 - (a) The IEP Team agreed to omit Student's task completion goal and benchmarks, and continue with all supports and accommodations for task completion needs.
 - (b) The IEP Team revised the behavior goal to include additional adult support for Student throughout all school environments.
 - (c) The behavior intervention plan, (BIP), was proposed based on the behavior supports within the May 28, 2019 IEP.

13. The behavior intervention plan focused on:
 - (a) Student's compliance with reasonable teacher directives;
 - (b) Completing tasks within the classroom;
 - (c) Self-monitoring; and,
 - (d) Preventative strategies.
14. For the X grade year, Student did not have any behavioral incidents reported in EschoolPLUS, and there were no behavioral incidents resulting in the use of physical restraint with Student.

2019 – 2020 School Year

15. At the beginning of the X grade year, staff observed an increase in Student's behaviors requiring intervention.
16. On October 10, 2019, the School sent Parent prior written notice to propose a functional behavior assessment (FBA) to identify specific target behaviors, the purpose of the behaviors, and the factors interfering with Student's educational progress.
17. On October 14, 2019, Parent provided consent for the FBA.
18. On October 7, 2019, the District sent written notice of an October 16, 2019 IEP Team meeting to review and revise Student's IEP. Parent signed a waiver of the right to receive (10) school days written notice of the meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
19. On October 16, 2019, the IEP Team meeting was held and included all members required by 34 C.F.R. § 300.306 and 14 DE Admin Code § 925.6.0.
20. Data was presented at the IEP Team meeting from September 24 through October 15, 2019 showing Student had a spike in non-compliance, refusals, disruptive behavior, elopement, dropping, and aggression during this time frame. The behaviors were reviewed in regard to settings, antecedents, and consequences. A chart consisting of frequency and duration data was constructed and operational definitions for the behaviors were provided .
21. Based on the data, the IEP Team found it necessary to revise Student's current behavior intervention plan due to Student's high rates of challenging behaviors which were interfering with Student's ability to participate and make progress in the general education curriculum.

22. The October 16, 2019 PWN states in relevant part:
 - (a) The IEP Team proposed revisions to Student's behavior intervention plan; and
 - (b) Organization A will be consulting with Student and teachers to assist in developing the FBA and revisions to the behavior intervention plan.
23. Since Organization A was unable to complete the FBA, the District entered into a contract with Organization B to complete the FBA.
24. On October 29, 2019, Student engaged in aggressive behavior toward a staff member resulting in the use of physical restraint by staff.
25. Student eloped from the classroom the morning of October 29, 2019 and was redirected to the break room where Student became physically aggressive toward the Dean of Students (Dean). According to the report, the Dean used redirection, deflection, verbal de-escalation, and blocking strategies before implementing a fifteen (15) second restraint at 9:50 a.m. A second staff member witnessed the use of the restraint.
26. The Dean has been trained in nonviolent crisis intervention four (4) times over the past six (6) years through the Crisis Prevention Institute's instructional materials.
27. In the afternoon of October 29, 2019, the school nurse went to the classroom to check on Student. The nurse reported Student had no swelling, discoloration, or breaks on the skin.
28. After recess; however, Student expressed to the classroom teacher at 2:45 p.m. that Student's foot was sore. Parent was called to the School and arrived when Student was in aftercare. The Principal, Assistant Principal, and nurse were with Student when Parent arrived at the School.
29. The Principal and Assistant Principal reported to Parent Student's complaint of having a sore foot. They also described to Parent Student's elopement behaviors and the details of the aggression that resulted in the use of the physical restraint that morning.
30. On October 30, 2019, Parent called the Assistant Principal advising that Student was seen at urgent care for the sore foot. Parent reported Student's ankle was severely sprained resulting in an air cast placed on Student's ankle and the need for physical therapy.
31. The School promptly scheduled an IEP Team meeting for November 4, 2019 to review and revise Student's IEP, and develop a crisis plan.
32. On November 1, 2019, the School sent written notice of the November 4, 2019 IEP Team meeting to Parent in compliance with 34 C.F.R. § 300.322 and 14 DE Admin. Code § 925.22. Parent signed a waiver of the right to receive ten (10) school days prior notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin. Code § 925.22.0.

33. On November 4, 2019, the IEP Team convened to review and revise the Student's IEP and discuss the crisis plan. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin. Code § 925.21.1. Parent attended and participated in the meeting.
34. The November 4, 2019 prior written notice states, in relevant part:
 - (a) The IEP Team proposed revisions to Student's behavior intervention plan to include a crisis plan;
 - (b) Data collection and functional behavior assessment would be completed by outside behavioral specialist to support the School's team;
 - (c) Student's current behavior plan would continue with some modification;
 - (d) Adult support would continue throughout Student's school day, with the addition of instruction and feedback from the behavioral specialist; and
 - (e) Parent's request for a written description of the October 29, 2019 behavior incident and use of restraints was accepted.
35. The District has a contract with Organization B for registered behavior technicians and assigned one of the technicians to work with Student in the classroom beginning on November 12, 2019.
36. Parent requested that the School provide physical therapy services to Student during school hours to address the injured ankle. A physical therapy script was given to the School for three (3) weeks of school based physical therapy.
37. On November 13, 2019, the School sent written notice of a November 19, 2019 IEP Team meeting to Parent in compliance with 34 C.F.R. § 300.322 and 14 DE Admin. Code § 925.22. The purpose of the meeting was to consider Parent's request for physical therapy services. Parent agreed by telephone to waive the right to receive ten (10) school days prior notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin. Code § 925.22.0.
38. On November 19, 2019, the IEP Team convened and included the members required by 34 C.F.R. § 300.321 and 14 DE Admin. Code § 925.21.1. Parent attended and participated in the meeting by phone.
39. The IEP Team discussed the need to complete a screening or physical therapy evaluation to determine Student's eligibility for school based physical therapy services. With Parent's agreement, the IEP Team decided against a formal physical therapy evaluation, and instead developed accommodations for Student to address the ankle injury and

mobility issues during the school day. The IEP Team's decision is addressed in a November 19, 2019 prior written notice.

40. At the IEP Team meeting, Parent also expressed concern Parent had not received a copy of the October 29th incident report detailing Student's behavior and the use of the physical restraint.
41. The written incident report was not given to Parent at the meeting, and none of the IEP Team members were involved in the physical restraint applied to Student on October 29th.
42. Parent alleges the School failed to report the use of physical restraint on Student in the manner required by Department regulations.
43. Pursuant to 14 DE Admin Code § 610.5.1, if a student is physically restrained, the School must make a reasonable attempt to notify the parent on the same day, but in no event later than twenty-four (24) hours after the physical restraint is used. The notification may be in person, by phone or by voicemail, or by E-mail.
44. In this case, the School complied with the parental notification requirement under 14 DE Admin Code § 610.5.1 when the Principal and Assistant Principal notified Parent in person that physical restraint was used with Student on the same day, October 29th.
45. In addition to parental notification, 14 DE Admin Code § 610.6.1.2 requires the school principal to provide a written report, in a uniform format determined by the Department, of the restraint to the Department within seventy-two (72) hours of the restraint. Pursuant to 14 DE Admin Code § 610.6.1.3, the written report must include the details of the restraint, the student behavior, a description of the events leading up to the use of the restraint, de-escalation techniques used prior to the restraint, a description of the student's behavior during the restraint, a summary of witness interviews, and any injury caused to the student, and related treatment deemed necessary as a result of the restraint.
46. Section § 610.5.2 requires the School to provide the parent with a copy of the final written report no later than the date the report is filed with the Department.
47. In this case, the Dean timely filed the required incident report with the Department on October 29, 2019 through EschoolPLUS. However, the School did not provide Parent with the filed report on the same date it was filed with the Department as required by 14 DE Admin Code § 610.5.2.
48. On November 4, 2019, a letter was generated from EschoolPLUS and mailed to Parent with a copy of the incident report. On November 8, 2019, the Dean also called Parent to relay the details of the restraint incident.
49. The District has a written policy titled "Restraint or Seclusion Incident Report Process." It outlines a progression of steps for staff to take when restraints are used, as well as what is required in order to request prior approval from the Department for the use of

seclusion. The District acknowledges its written policy does not include a specific provision requiring the incident report be provided to the parent.

50. The District also admits its error in failing to provide Parent with the written incident report in a timely manner and has taken corrective measures. On November 11, 2019, the District administration met with School staff to discuss the reporting requirements and the provision of the written report to parents when a restraint is used by staff.
51. On December 11, 2019, the Executive Director of Special Education and Support Services conducted training with all school principals to review and required the development of procedures for notifying parents of the use of restraints in the manner required by Department regulations.
52. In addition, the staff were directed to review the professional development management system (PDMS) statewide training module on the use of restraints. As of this date, some School staff have completed it.
53. At the time of the October 29, 2019 incident, the School was still completing the FBA and revisions to the behavior intervention plan as discussed at the October 16, 2019 IEP Team meeting.
54. Through the District's contract with Organization B, a board certified behavior analyst was assigned to work specifically with Student in completing Student's FBA.
55. The IEP Team meeting to review the FBA and behavior intervention plan is scheduled for December 18, 2019.

CONCLUSIONS

A. Required Incident Report of Physical Restraint

The Department's complaint investigation is limited to allegations stating a violation of Part B of the IDEA and corresponding state special education regulations under 14 DE Admin Code § 922 through § 929. The District's noncompliance with 14 DE Admin Code § 610.5.0 and 610.6.0 does not invoke Part B of the IDEA or corresponding state regulations. *As a result, I find no violations of the IDEA and corresponding state and federal regulations.*

B. The School Implemented the Behavior Supports, Services, Accommodations, and Interventions Required by Student's IEP and Behavior Intervention Plan

The IDEA and Delaware law require schools 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); 14 DE Admin Code § 923.1.2. FAPE 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 Department 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;
- (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.

See, 14 Del. C. § 3101(5). FAPE is provided to students with disabilities through the implementation of the IEP.

In this case, I find the School is providing the behavioral supports, services, accommodations, and interventions to Student in the manner required by the IEP and behavior intervention plan. During interviews, the staff involved with Student demonstrated knowledge of Student's disability, educational needs, and the behavioral services, supports, accommodations, and interventions Student requires to progress in the general education curriculum. The IEP Team determined at the February 5, 2019 IEP Team meeting Student's behavior impeded learning and specific interventions and supports were addressed under the IEP goals for compliance, completing tasks, and self-monitoring behaviors. The behavior intervention plan was discussed, revised, and revised at subsequent IEP Team meetings with Parent's participation. When Student had a spike in challenging behaviors at the start of the X grade year, the School responding proactively by analyzing the behavior data, starting the process for the FBA, involving an outside behavioral analyst to work with Student and revising the behavior intervention plan to include a crisis plan. ***For the reasons stated, I find no violation of the IDEA or corresponding state and federal regulations related to the implementation of behavioral supports, services, accommodations, and interventions to address Student's behavioral needs.***

CORRECTIVE ACTION

The Department is required to ensure that corrective actions are taken when violations of the requirements are identified through the complaint investigation process. In this case, no violations of Part B of the IDEA and implementing state or federal regulations were identified.

By: /s/
Assigned Investigator