

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

FINAL REPORT

STATE COMPLAINT RESOLUTION

DE SC 20-08 (February 10, 2020)

Part 1¹

On December 12, 2019, Parent filed a complaint with the Delaware Department of Education (Department) alleging the School District (District) failed to implement Student’s IEP resulting in a denial of a free appropriate public education (FAPE) 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 Department’s regulations at 14 DE Admin Code § 923.51.0 to § 53.0. The investigation included review and consideration of records provided by Parent and the District. Interviews were also conducted with Parent and District staff.

The decision includes findings of fact that are relevant and material to the issues stated in the complaint and whether the District violated Part B of the Individuals with Disabilities Education Act (IDEA) and implementing state and federal regulations. To the extent there are facts not referenced in this decision, the facts have been omitted as not relevant or necessary to a determination of the material issues stated in the complaint.

COMPLAINT ALLEGATIONS

The complaint alleges the District is not implementing Student’s IEP with respect to: (a) the chunking of assignments into smaller manageable parts; (b) the provision of small group testing for Student; (c) teacher prompts to remind Student to turn in assignments; and (d) the consistent use of Student’s agenda for homework assignments, organization, and task completion. Parent also alleges the District is not meeting Student’s transportation needs as it relates to Student’s disability.

FINDINGS OF FACT

1. Student is a REDACTED (REDACTED) year old student eligible to receive special education and related services pursuant to the disability categories of autism and other health impairment outlined in 14 DE Admin Code § 925.6.6. and § 925.6.14.

¹ The complaint filed on December 12, 2019 includes allegations arising under Part B of the IDEA related to two (2) siblings receiving special education services and attending different grade levels within School. The factual findings and conclusions are distinct for each of the children. The complaint decision SC 20-08 is addressed in two (2) parts for ease of reference.

2. Student attends the REDACTED (REDACTED) grade at School in the School District for the 2019 - 2020 school year. Student attended the same school during the REDACTED (REDACTED) grade during the 2018 – 2019 school year.

Student's IEP

3. On September 13, 2019, an IEP team meeting was held for the annual review of Student's IEP. The school sent timely written notice of the meeting to Parent on August 28, 2019 in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
4. The IEP team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent and Student attended and participated in the meeting.
5. The September 2019 IEP provides for Student's educational needs in the areas of emotional regulation, executive functioning, and organizing homework and classwork materials.
6. The September IEP addresses specially designed instruction within the general education setting and annual goals in written expression, math problem solving, and organization. The IEP includes numerous modifications and accommodations to support Student with executive functioning, organization, and academic needs.
7. To address Student's executive functioning, the IEP requires Student to use an agenda for homework assignments with agenda checks and staff support prior to dismissal to ensure Student accurately wrote down all assignments.
8. The IEP provides that Student will spend greater than eighty (80%) of the day in the regular education classroom. Student receives push-in support from a special education teacher in ELA and math, and services from an autism support teacher.
9. The autism support teacher provides itinerant support to Student related to organization and executive functioning skills, and IEP goals. The autism support teacher provides the daily check-out service (reviewing Student's agenda) and also meets with Student to review assignments, chunk lengthy assignments, and provides support to content teachers with implementation of the IEP supports and services.
10. The IEP includes post secondary goals, transition services and activities, and courses of study from Student's current year through graduation to help Student reach post secondary goals.
11. The September 2019 IEP contains related services including consultative speech and language therapy services one (1) time a month for fifteen (15) minutes, consultative psychological services for forty (40) minutes a month, and counseling services in a group setting for two (2) sessions a month for twenty (20) minutes each session.

12. The IEP team determined Student will participate with accommodations in the statewide assessment (DeSSA) with small group testing in ELA, math, science and social studies. The accommodations are reflected in a form checklist attached to the IEP.
13. The September 2019 IEP provides for Student to participate in regular school bus transportation.
14. Parent signed the IEP in agreement with the proposed program and placement. The District provided Parent with prior written notice proposing the IEP in compliance 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0.
15. However, Parent raised concerns with Student's teachers and the educational diagnostician about the non-implementation of provisions in Student's IEP. Parent provided examples of concerns documented in E-mails to school staff pointing out Student's executive functioning needs and the importance of consistent use of the agenda by teachers to support Student. Parent raised similar concerns about implementation of supports for Student in the 2018 – 2019 school year.
16. The school scheduled an IEP team meeting for November 8, 2019 to address Parent's concerns and review and revise Student's IEP.
17. The school sent timely written notice of the meeting to Parent on October 21, 2019 in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
18. Prior to the IEP team meeting, Parent provided a four (4) page list of discussion items for the IEP team, including accommodations and supports to be added to Student's IEP. Parent received input from Student's therapist and other persons knowledgeable about Student's needs in preparing the discussion items.
19. The IEP team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent and Student attended and participated in the meeting.
20. Parent's discussion items were reviewed at the November 8, 2019 meeting and the IEP was revised. It was noted Student was making good academic progress and showing improvement in daily school performance, organization, and task completion.
21. On or about November 8, 2019, the District provided Parent with prior written notice in compliance with 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0, and began implementation of the revised IEP following the (10) school day notice period.
22. The November 8, 2019 prior written notice reflects that additional supports were added to Student's IEP to help with social skills development and self-regulation. A goal for self-

regulation was added to measure Student's ability to identify emotions and use appropriate coping strategies.

23. Student's counseling support was also increased by an additional forty (40) minutes in a social skills group to address difficulties in identifying healthy relationship characteristics in peers.
24. Accommodations and supports in the IEP were also revised at the November 8, 2019 IEP team meeting. The specific revisions are relevant to the complaint issues and are discussed in more detail below.
25. In November and December 2019, Parent sent E-mails to the educational diagnostician requesting additional revisions to the IEP and clarification. Parent continued to raise concerns about the consistent use of the agenda and specifically, the content teachers not signing the agenda entries or teachers writing down the homework for Student.
26. The District has contacted Parent to schedule an IEP team meeting to review and revise Student's IEP, and consider Student's requested revisions.

Student's Progress

27. Student is meeting grade level standards and making meaningful educational progress.
28. Student received final grades of REDACTED in science and art, and REDACTED in ELA, social studies, math, Spanish, business, and physical education while in the REDACTED (REDACTED) grade.
29. During the first marking period of the REDACTED (REDACTED) grade, Student received REDACTED in science, art, and physical education, REDACTED in social studies and pre-algebra, and a REDACTED in ELA. During the second marking period of the (REDACTED) grade, Student received REDACTED in science and art, REDACTED in ELA, pre-algebra, and physical education, and a REDACTED in social studies.
30. Student's grades for each content course include Student's performance on summative and formative assessments, quizzes, tests, classroom assignments, and homework assignments, and projects.
31. Results from the scholastic reading inventory administered in May 2019 and September 2019 reflect Student's reading skills are above grade level. Results from the scholastic math inventory administered in September 2019 indicate Student's math skills are on grade level.

32. Student is making progress on IEP goals and quarterly benchmarks.
33. The annual IEP goal for organization skills provides that Student will write the homework assignments in the appropriate places in the agenda book, gather materials, and bring them home five (5) out of five (5) days as measured by one (1) agenda check per week by the teacher through the course of the marking period.
34. IEP Progress data for January 17, 2020 reflects Student can write homework in the agenda in the appropriate places, gather materials, and bring them home with ninety-four percent(94%) accuracy in five (5) out of five (5) days as measured by a daily agenda check by the teacher throughout the marking period.
35. IEP progress data for January 17, 2020 also reflects continued progress toward meeting the social skills goal added to the IEP on November 8, 2019. Data collected by the school psychologist reflects Student can successfully identify five (5) appropriate characteristics that Student would look for in a friend, and five (5) characteristics that make Student a good friend.
36. Student is also making progress in meeting IEP benchmarks for the math problem solving goal and the self-regulation goal based on quarterly data.
37. Results from the Smarter Balance ELA and Math assessment administered in April 2019 reflect Student is proficient and on grade level with ELA and math skills.
38. The math teacher reported Student received REDACTED and REDACTED for most of the tests this year, and Student knows the material better than most of peers. The social studies teacher reported Student is friendly, displays no off task behavior, and regularly participates in offering insight into class content.
39. The ELA teacher reported Student has made great progress academically, and has grown to be a better self-advocate. Student's organization has improved and Student uses a color coding system when writing essays and completing certain assignments. Student completed a recent group presentation and collaborated effectively with peers.

Implementation of Student's IEP

40. On December 12, 2019, Parent filed the complaint with the Department alleging that instructional staff are not implementing Student's IEP with respect to: (a) the chunking of assignments into smaller manageable parts; (b) the provision of small group testing for Student; (c) teacher prompts to remind Student to turn in assignments; and (d) the consistent use of Student's agenda for homework assignments, organization, and task

completion. Parent also alleges the District is not meeting Student's transportation needs as it relates to Student's disability.

Chunking of Assignments

41. In 2016, Student was evaluated by Harris Finkelstein, Ph.D., NCSP when Student attended a Delaware public charter school. Dr. Finkelstein's evaluation report recommends, in relevant part, that Student requires larger assignments to be broken into smaller parts and Student consistently needs help tracking assignments and developing schedules to complete assignments.
42. Student's September 2019 IEP requires large projects and assignments be broken into manageable parts for Student and presented in the form of a checklist to be used by Student to check in with the teacher on progress. The IEP requires clear, concise, and very explicit directions (verbal and visual) be provided to Student to aid in processing of task expectations. The IEP also requires tasks and projects to be chunked into parts for Student with rubrics to aid in tracking progression.
43. Student has a monthly book report to complete involving several steps and advance planning for task completion. The special education teacher uses several planning checklists and strategies with students in the classroom to focus them on the smaller steps needed for the overall completion of the book report.
44. For the first two book reports, however, the smaller steps were not reflected in Student's agenda or in the book report assignment sent home for completion. It was not clear in Student's agenda what section or step of the book report assignment needed completion by a date certain.
45. Student earned a REDACTED% a REDACTED% on the first two book reports, but both reports were turned in late. Parent described how Student would focus on the overall due date for the book report. Without a planning sheet referencing the smaller steps with dates, Student could not understand there were smaller steps requiring completion to finish the entire book report by its due date.
46. Parent relayed the concern to school staff and requested staff to chunk the book report assignment for Student with smaller steps and due dates listed in Student's agenda.
47. Student's IEP was revised at the November 8, 2019 meeting to specify that large assignments be broken down into manageable parts with smaller due dates to keep Student on track with completing the project in a timely manner.
48. The autism support teacher then developed a planning sheet for Student for the next book report assignment and sent it by E-mail to Parent and Student's tutor. The autism support

teacher drafted out dates when each step was due for the book report assignment, and reviewed the dates with Student using a calendar as a visual aid. The teacher filled in specific dates in Student's agenda for each step required to complete the December book report and reviewed it with Student by referencing the agenda. The autism support teacher has since provided this accommodation for other large projects assigned to Student, including large social studies projects.

49. Parent confirmed the chunking was provided to Student for the December book report. After Parent contacted the school staff, the assignment was appropriately broken down into smaller steps with due dates for each step and reflected in Student's agenda.

Testing in Small Groups

50. The September 2019 IEP requires teachers to provide Student with extended time for classroom assessments. It does not require instructional staff to administer classroom assessments to Student in a small group setting.
51. However, the IEP team determined Student requires small group testing for the statewide assessment (DeSSA) in ELA, math, science and social studies. The accommodation is reflected in a checklist attached to the IEP.
52. At the November 8, 2019 IEP team meeting, it was noted that Student was reporting high noise levels in some classes. The IEP was revised to provide that Student will be given the opportunity to complete work and/or tests in a quiet location, and quiet areas for breaks, work completion, and de-escalation.
53. However, Parent alleges, and the educational diagnostician confirmed, that Student does not typically elect to take classroom assessments in a small group setting and declines the opportunity when prompted by teachers. Some small group testing is provided by teachers, but not consistently in each content class.
54. It is not clear why the small group testing accommodation on the statewide assessment was deemed necessary for Student, but optional for classroom based assessments.

Teacher Prompts for Submission of Assignments

55. In order to address Student's executive functioning needs, the September IEP requires teachers to provide Student with a consistent system for submitting assignments and to prompt Student to turn in assignments. The September IEP provides that Student should not fail assignments due to organizational challenges related to Student's executive functioning needs.

56. Parent raised concerns with school staff related to the implementation of Student's IEP and the need for consistent prompting and assignment submittal procedures to address Student's executive functioning needs. It was noted at the November 8, 2019 IEP team meeting, the content teachers do not have a consistent system for the submission of assignments, and each process differs based on the classroom.
57. Student's IEP was revised at the November 8, 2019 meeting to state each teacher will create and use a consistent homework and classwork assignment submittal system for Student and Student would be prompted to turn in assignments.
58. No consistent system was created or used with Student, despite the language in the IEP requiring it. Instead, the autism support teacher created a document for Student titled "Homework Hand in Procedures" and reviewed it with Student and the teachers. The document was placed in Student's agenda to help Student remember the process for turning in assignments based on the practice followed in each class.
59. Student received a zero on a homework assignment during the first marking period for an assignment Parent knew Student had completed at home, but left it in the book bag. Parent asked the special education teacher what prompting was provided to Student for turning in the assignment and asked for Student to receive credit for the assignment. But, no credit was given.
60. The autism support teacher currently works with Student each day on organization and task completion skills, and prompts Student to turn in assignments.
61. The ELA teacher and special education teacher also prompt Student at least once per class period to turn in assignments and homework. Student has lost points in ELA for not turning in assignments, but very infrequently. Student typically turns in all assignments in ELA and requires much less prompting to do so.
62. The social studies teacher reported Student is prompted once at the beginning of class, and once at the end of class, to turn in assignments. In social studies, Student lost points for not turning in one (1) assignment during the second (2nd) marking period; however, multiple reminders were given to Student. Student has not lost points for turning in late assignments in social studies class.
63. The science teacher reported Student is prompted daily to turn in assignments. Student has lost points for not turning in an assignment, but was given several reminders related to that assignment. Student has not lost points for turning in late assignments in science class.
64. The math teacher reported Student is prompted on a daily basis to turn in assignments. If Student does not have the homework assignment out on the desk, the math teacher or

special education teacher asks Student if the homework was completed and prompts Student to turn it in. Student has lost points for not turning in one (1) homework assignment, and received half credit for turning in one (1) assignment late. In both cases, Student was prompted and reminders were provided.

Use of Agenda for Homework Assignments, Organization, and Task Completion

65. The September 2019 IEP identifies organization and task completion as Student's areas of need and includes accommodations and supports, as follows:
 - (a) Agenda checks prior to dismissal to ensure Student accurately documented all assignments and Student has the necessary materials to complete homework;
 - (b) Staff support to make sure Student's agenda book is filled out per each class based on the assignment or project;
 - (c) Additional teacher and staff prompting for Student to write assignments into the agenda, and to turn in assignments during class.
66. The IEP provides that staff should "check-out" Student at the end of the day by reviewing the assignments to be completed and making sure all materials to complete them are in Student's book bag. The IEP requires that during check-out a staff member to sign Student's agenda to confirm that assignments are legible and assignments are discussed and checked for materials. The amount of check outs per week should decrease overtime per marking period to prompt and support Student's growth in organization and success toward overall independence.
67. While not specifically stated in the IEP, Parent requested and expected that each content teacher sign Student's agenda entries to confirm Student wrote down the homework assignment correctly for the class and the check-out staff sign the agenda to confirm check-out.
68. The autism support teacher routinely signed Student's agenda to confirm check-out.
69. The District acknowledges that content teachers were not signing the agenda entries consistently for the first few months of the school year, and the homework entries were not always written by Student. Some agenda entries were written by Student's special education teacher, who expressed at the September 8, 2019 IEP team meeting the belief that Student does not require such level of support.
70. Parent provided several examples from Student's agenda, dated September through November 2019, requesting the content teachers had not signed Student's agenda entries and occasions when Student had not written down the homework assignment legibly, or the entry is not written by Student as required by the IEP. Parent also a few examples when Student comes home with missing items for completion of homework assignments.

71. On October 10, 2019, the special education teacher met all of Student's content teachers during a professional learning community (PLC) and reviewed Student's IEP and the specific supports required to address Student's executive functioning needs, including the use of the agenda for homework assignments and Parent's request that each content teacher sign the agenda entries.
72. The school also scheduled an IEP team meeting for November 8, 2019 to address Parent's concerns and review and revise Student's IEP.
73. In order to address organization skills, the IEP was revised on November 8, 2019 to require teachers to conduct bi-weekly locker checks to keep Student organized throughout the marking period. The revision provides that teachers will prompt Student to organize documents from the locker into the correct places.
74. After the November 8, 2019 IEP team meeting, the content teachers began listing all homework assignments in a Google document specifically for the autism support teacher as it relates to Student. The autism support teacher reviews the document when checking Student's agenda at the end of the day to confirm Student has written each homework assignment accurately in the agenda and has all needed materials for the assignment. Most homework assignments are on Student's Chromebook which Student takes home daily.
75. If the autism support teacher notices an agenda entry without a content teacher's signature at end of the day check-out, the teacher typically directs Student to return to the content teacher for review and signature of the agenda for that class.
76. Some instructional staff acknowledge there are days when they will write a homework assignment in Student's agenda due to time constraints, Student leaving the classroom early, or other unforeseen circumstances.
77. The practices with the agenda improved after the November 8, 2019 IEP team meeting. However, Parent provided examples of Student's agenda from November, December, and January reflecting entries when the content teachers have not signed the agenda, or some of entries are not in Student's handwriting.
78. The autism support teacher and educational diagnostician also reviewed Student's agenda and *estimated* five (5) times in November and December 2019 the homework assignment was not in Student's handwriting and *estimated* five (5) times in January 2020. There are an *estimated* twenty-four (24) times a content teacher did not sign the agenda entry in November and December 2019, and an *estimated* seven (7) times in January 2020.

79. The majority of the agenda entries are written by Student, and the agenda entries are consistently signed at check-out by the autism support teacher.

Bus Transportation

80. Student's IEP provides for Student to participate in regular school bus transportation with peers. While not documented in the IEP, Student receives preferential seating near the bus driver.
81. Student has sensory sensitivity which are triggers for problem behaviors when over stimulated. Student has noise canceling headphones for the school bus, but does not frequently wear them.
82. During the 2018 – 2019 school year, Parent reported that Student was taunted and bullied by another child on the bus causing Student to behaviorally react. The school staff investigated the incidents and concluded the incidents did not constitute bullying. Rather, the behaviors were isolated and episodic and mostly typical peer to peer behavior for REDACTED aged children, which tended to trigger behaviors.
83. In efforts to support Student, the school staff had Student sit in the front of the bus so the driver could observe any concerning behavior beginning in the spring of 2019.
84. Student continues to sit at the front of the bus in the REDACTED (REDACTED) row during the 2019 – 2020 school year. The bus driver confirmed the driver can observe Student at all times, and Student frequently listens to music on the cell phone with wired headphones.
85. The bus driver reported Student displays typical behavior on the bus. While the driver occasionally observes Student to be emotionally upset when Student enters the bus, Student quickly takes a seat and calms down. The bus driver reported Student rarely seems distressed and it happens less than once a month.
86. There are a few students who also sit at the front of the bus because they are disruptive to other children. Student asked to sit with one of these students, and they now sit together each day and talk. The driver reported they talk for the duration of the bus ride or listen to music. Student used to sit alone in the REDACTED (REDACTED) row bus seat, and now enjoys sitting with the peer.
87. In the beginning of the 2019 – 2020 school year, Parent reported to the principal another student was taunting Student in school and through social media. The principal investigated Parent's concern, and talked with the student to address it. The student does not ride the school bus.

88. There was another occasion when the peer Student sits with on the bus was moved to another seat due to behavior. Student felt the peer was not treated fairly and became upset. Student talked with the educational diagnostician and Parent by phone, calmed down, and returned to class.
89. The principal has not received any behavioral referrals or reports from staff involving Student.
90. According to the classroom teachers, Student shows no hesitation or reluctance to get on the bus in the afternoon to go home. Additionally, Student has not mentioned or referenced any inappropriate behavior by peers on the school bus to the teachers.

CONCLUSION

A. Implementation Failure of Student's IEP Is Material

The IDEA and corresponding Delaware law requires 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); 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 Department's regulations, 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. A school district must provide all the services and supports in the student's IEP. *See*, 34 C.F.R. § 300.323(c); 14 DE Admin Code § 925.23.2.

However, the requirement to implement the IEP does not mean a school district must perfectly implement a student's IEP to provide FAPE. A minor difference between the services required by the IEP and the services provided is not sufficient to amount to a denial of FAPE. *I.Z.M v. Rosemount-Apple Valley Eagan Public Schools*, 70 IDELR 86 (8th Cir. 2017). When a district substantially implements an IEP, the failure to comply with a single component of the IEP does not deny the student FAPE. *A.P. v. Woodstock Board of Education*, 55 IDELR 61 (2d Cir. 2010).

In this case, I find the implementation failure of Student's IEP is material, and attributable to a lack of clarity in the IEP and inconsistent implementation of the agenda by instructional staff.

Student is making progress on IEP goals, receiving passing scores on standardized assessments, and receiving REDACTED and REDACTED in content classes. But, Parent also raised concerns about the implementation of the IEP with school staff and followed up to address implementation of the IEP for missed assignments, late assignments, and points deducted from Student's grades due to organizational challenges.

The provision in the IEP related to Student's educational need for small group testing and how it should be implemented is not clear and consistent. The September 2019 IEP does not provide for Student to take assessments in a small group setting. However, the IEP team determined Student requires small group testing for the statewide assessment. It is not clear why the small group testing accommodation for the statewide assessment was deemed necessary for Student, but not for other assessments. The November 2019 IEP revision provides Student with the opportunity to take tests in a quiet location because Student reported high levels of noise in some classes. However, it is not clear which classes are noisy to Student. In addition, Parent alleges, and the educational diagnostician confirmed, Student will often decline the opportunity for small group testing when offered because Student does not want to appear different to peers. Some small group testing is provided, but not consistently.

The evidence demonstrates that teachers are chunking Student's assignments and larger projects in an effective way. Teachers are also prompting and reminding Student to turn in homework and classroom assignments consistent with the IEP. However, Student has lost points for not turning in assignments and for turning in assignments late. It is not clear if the point deductions for late or missed assignments are due to Student's organizational challenges and executive functioning needs, or some other reason.

In addition, the District acknowledges that content teachers were not signing Student's agenda entries consistently for the first few months of the school year, and homework entries were sometimes written by teachers, or not at all. While intervention and supports were added to the IEP on November 8, 2019 and implemented effectively by the autism support teacher, there are agenda entries from November 2019 through January 2020 not written by Student, even though the IEP goal requires Student to write down the homework assignments. In addition, there are multiple agenda entries from November 2019 to January 2020 are not signed by the content teachers, as Parent requested, and the school agreed to provide. It is entirely reasonable there will be occasions when a teacher writes down the homework assignment for Student, or a teacher is not able to sign the entry due to time constraints or unforeseen circumstances. But overall, Student and Parent require the consistent use of the agenda to support Student's executive functioning needs, and have the expectation it will be implemented as outlined in the IEP and agreed to by the school.

Also, the provision in the IEP requiring teachers to create a consistent turn in system for Student's assignments was not implemented as written in the IEP. The autism support teacher created a documented with hand in procedures to help Student remember and navigate the process for turning in assignments based on the practice in each class. While the intervention was effective, it was a provision of the IEP not being implemented as written. **For the reasons stated, I find a**

violation of Part B of the IDEA and corresponding Delaware law related to the provision of a free appropriate public education to Student.

B. Student's Transportation Needs Are Met

Transportation is a related service under the IDEA and includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment such as special or adapted buses, lifts and ramps, if required to provide special transportation for a child with a disability. *See*, 34 C.F.R. § 300.34(c)(16); 14 DE Admin Code § 922.3.0. It is the IEP team's role to determine if transportation is required to assist a child with a disability to benefit from special education and related services and how the transportation services should be implemented.

In this case, the District is meeting Student's transportation needs related to Student's disability. The school investigated the behavior incidents reported during the 2018 – 2019 school year and concluded the incidents on the bus did not constitute bullying. Rather, the behaviors were isolated and episodic and mostly typical peer to peer behavior for REDACTED aged children, which tended to upset Student behaviorally. In order to support Student, the school staff had Student sit in the front of the bus so the driver could observe any concerning behavior beginning in the spring of 2019. Student continues to sit at the front of the bus in the REDACTED (REDACTED) row during the 2019 – 2020 school year, and the driver confirmed the driver can observe Student at all times. Student displays typical behavior on the bus, and if Student is emotionally upset when Student enters the bus, the driver observes Student to take a seat and quickly calm down. The principal has not received any behavioral referrals or reports from staff involving Student. According to the classroom teachers, Student shows no hesitation or reluctance to get on the bus in the afternoon to go home. Additionally, Student has not mentioned or referenced any inappropriate behavior by peers on the school bus. **For the reasons stated, I find no violation of Part B of the IDEA and corresponding Delaware law as it relates to Student's transportation needs and the provision of a free, appropriate public education.**

It is important to note the U.S. Department of Education Office of Special Education and Rehabilitative Services issued a Dear Colleague Letter dated August 20, 2013 stating in relevant part: "...bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied. However, even when situations do not rise to a level that constitutes a denial of FAPE, bullying can undermine a student's ability to achieve his or her full academic potential." In this case, the District worked with the bus driver to make adaptations to the bus for Student and Student was moved to the front of the bus with direct observation by the driver. **For the reasons stated, I find no denial of FAPE based on allegations of Student being bullied on the bus.**

CORRECTIVE ACTION

Student Level Corrective Action

1. On or before **March 31, 2020**, the District shall assess Student's educational need for small group testing based on data.
2. On or before **April 20, 2020**, the District shall conduct an IEP team meeting to revise Student's IEP, as warranted, with specificity to address the following:
 - (a) the consistent use of Student's agenda based on the findings and conclusions identified in this decision.
 - (b) Student's need for preferential seating on the school bus, as needed, and any other accommodations related to transportation.
 - (c) Student's needs for small group testing based on Student's disability, and whether Student needs to be prompted.

The IEP team members shall include Student's content teachers for all or part of the IEP team meeting, as well as the Director of Office of Special Services for the District.

The District shall develop an action plan and revise Student's IEP, as warranted, to ensure the consistent use of Student's agenda by instructional staff and the provision of small group testing to Student (as deemed appropriate) and may include corrective action steps already taken, including revisions to the IEP made after the complaint was filed on December 12, 2019. The District shall also ensure data is collected to monitor the consistent use of Student's agenda by instructional staff and the provision of small group testing to Student and its effectiveness.

4. The District shall provide copies of the notice of IEP team meeting, any IEP revisions, and prior written notices to the Director of the Exceptional Children Resources Work Group on or before **April 30, 2020**.

School Level Corrective Action

1. The school shall provide professional development to special education staff in the school, and school administrators, regarding the following topics:
 - (a) the protocol for evaluating a student's need for small group testing and how to address the need clearly and consistently within IEPs; Staff should review the 2019-2020 Accessibility Guidelines which can be found on the Department's website which includes review of the Decision Tree for Assessing Students with Disabilities.
<https://www.doe.k12.de.us/Page/2138>
 - (b) consistent and effective uses of the agenda by instructional staff for organization and task completion for students with executive functioning needs.

2. The District shall provide evidence of completing the corrective actions to the Director of the Exceptional Children Resources Work Group on before **April 30, 2020**. 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 by **April 30, 2020**.

By: /s
Assigned Investigator