

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT**

**STATE COMPLAINT RESOLUTION**

**DE SC 20-08 (February 10, 2020)**

**Part 2<sup>1</sup>**

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 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 addressing the issues stated in the complaint and whether the District violated Part B of the 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 issues stated in the complaint.

**COMPLAINT ALLEGATIONS**

On December 12, 2019, Parent filed the complaint with the Department alleging the instructional staff are not implementing Student’s IEP with respect to: (a) the provision of visual and audio visual aids to Student; (b) consistent use of Student’s agenda for homework assignments and organization; and (c) teacher prompts to remind Student to turn in completed homework assignments.

**FINDINGS OF FACT**

1. Student is REDACTED (REDACTED) years old and receives special education and related services pursuant to the disability eligibility criteria of other health impairment in 14 DE Admin § 925.6.14.
2. Student currently attends the REDACTED (REDACTED) grade at School (school) in the School District. Student attended the same school for the REDACTED (REDACTED) grade during the 2018 – 2019 school year.

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<sup>1</sup> 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. For ease of reference, the complaint decision SC 20-08 is addressed in two (2) parts.

### Student's IEP

3. On June 12, 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 May 6, 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 attended and participated in the meeting.
5. The June 2019 IEP includes annual goals in executive functioning and math problem solving skills, as well as modifications, supports, and accommodations to help Student succeed academically.
6. Student needs support with organization and task planning to address executive functioning needs. The IEP requires frequent check-ins by teachers for task completion and progress, time extension on assessments, and use of visuals and audio visuals access upon request.
7. Supports also include chunking of large assignments into smaller parts, reduced print on a page, single step directions, preferential seating away from distractions, subtle cues to alert attention, frequent checks for understanding, prompting to read directions, and restating instructions before starting a task.
8. The IEP requires teachers to remind Student to copy homework assignments into the agenda, provide support to make sure the agenda is filled out, signed by staff, and ensure during end of day check-out, Student has all materials needed to complete assignments at home. The purpose of the agenda is to track homework assignments and dates that tests and quizzes will be given so Student can study.
9. Student also receives small group testing to help Student maintain focus with questions and answers read aloud and rephrased to help Student with understanding.
10. The IEP team determined that Student will participate with accommodations in the statewide assessment (DeSSA) with text to speech support in English Language Arts (ELA), math, science and social studies. The accommodation is reflected in a form checklist attached to the IEP.
11. Pursuant to the IEP, Student receives specialized instruction for math problem solving skills and teacher check-ins and re-teaching of concepts to build on problem solving skills.

12. The IEP provides that Student will spend greater than eighty (80%) of the day in the regular education classroom with push-in support from the special education teacher for direct instruction in math problem solving skills.
13. 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 the post secondary goals.
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.

### **Student's Progress**

15. Student made the honor roll while in the REDACTED (REDACTED) grade, and received REDACTED in social studies, computer applications, physical education, and art, and REDACTED in ELA, math, science and Spanish. Student had perfect school attendance with no absences and no behavioral referrals.
16. Student received REDACTED in science and physical education, REDACTED in ELA, math, and Spanish, and a REDACTED in social studies for the first making period of the REDACTED (REDACTED grade). Student received REDACTED in ELA, math, social studies, science, and physical education, and a REDACTED in Spanish for the second marking period. Student has no absences from school and no behavioral referrals to date for the 2019 – 2020 school year.
17. 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. Student is meeting grade level expectations and making meaningful educational progress.
18. Results from the scholastic reading inventory administered in May and September 2019 reflect Student's reading skills are on grade level. Results from the scholastic math inventory administered in May and September 2019 demonstrate Student's math skills are proficient.
19. Student is also close to mastery of IEP goals for executive functioning and math problem solving.
20. The annual IEP goal for executive functioning provides that Student will independently complete eighty (80%) of grade level tasks using the agenda to track homework until completion with minimal teacher cues to submit work. Mastery of the IEP annual goal is projected for June 10, 2020.

21. Progress data for the second quarterly benchmark, dated January 17, 2020, reflects Student completed seventy six percent (76%) of grade level tasks using the agenda, and is close to mastery of the annual goal.
22. The annual IEP goal for math problem solving provides Student will use properties of operations to solve with eighty-five (85%) accuracy in two (2) out of three (3) trials when given multi-step grade level problems involving all forms of rational numbers.
23. Progress data for the second quarterly benchmark, dated January 17, 2020, reflects Student is using properties of operations with seventy-five (75%) accuracy, and is close to mastery of the annual goal.

### **Implementation of Student's IEP**

24. On December 12, 2019, Parent filed the complaint with the Department alleging the instructional staff are not implementing Student's IEP with respect to: (a) the provision of visual and audio visual aids to Student; (b) consistent use of Student's agenda for homework assignments and organization; and (c) teacher prompts to remind Student to turn in completed homework assignments.

### **Use of Visual and Audio Visual Aids**

25. The IEP provides for Student "use of visuals and audio/visual access upon request" to address Student's executive functioning needs.
26. The school's curriculum provides multiple visual and audio aids for students to use in class in the general education setting. The teachers provided examples of visual and audio visual aids routinely used in the classroom with students for assignments in all content areas.
27. As an example, students use the agenda book as a visual aid for organization and task completion.
28. Videos and online verbal explanations are available to students on the Chromebooks for content covered in class and to reinforce skills taught.
29. Student uses a Chromebook and has accessibility to the Snap &Read program for converting text to speech for classroom and homework assignments.
30. On a weekly basis, the special education teacher reviews the data listed on Home Access Center with Student as a visual aid for organization and timely submission of assignments.

31. In math class, the special education teacher provides Student with online videos to demonstrate or reinforce math problem solving skills when needed. The math curriculum does not have an audio book.
32. In ELA class, the teacher reported Student uses the audio book on a weekly basis for reading stories, and the teacher prompts Student to use it.
33. In science class, there is an electronic textbook with an audio feature that reads text, and the teacher encourages Student to use it.
34. In social studies, the teacher reported Student can use the Snap &Read program on the Chromebook to convert text to speech for reading materials. No traditional textbook is used with the social studies curriculum.
35. The teachers confirmed Student knows how to access the audio visual aids for each class, including the audio books, but will frequently decline the aid if the other students are not using them.
36. Parent reported the private tutor is using books on tape with Student and Student's grades have improved as a result.

#### **Use of Agenda For Homework Assignments and Organization**

37. All students in the general education setting use an agenda for organization and to track homework assignments and dates that tests and quizzes will be given.
38. In order to address Student's executive functioning needs, Student's IEP explicitly requires that teachers remind Student to copy homework assignments into the agenda, provide staff support to make sure the agenda is filled out and signed by staff, and ensure during the end of day check-out, Student has all materials needed to complete homework assignments.
39. While not specifically stated in the IEP, Parent requested that each content teacher sign Student's agenda entry to confirm Student wrote down the homework assignment accurately for the class.
40. The content teachers are aware of the provision in Student's IEP requiring Student to write down the homework assignment for each class and the teachers' responsibility to initial the entries. The teachers reported they have been reviewing and signing Student's agenda entries on a daily basis since the beginning of the 2019 - 2020 school year.
41. However, Parent provided examples from Student's agenda, dated September through November 2019, when staff have not initialed Student's agenda entries and occasions

when Student has not written down the homework assignment legibly, or the homework assignment is written by the teacher.

42. Instructional staff acknowledge there are days when they will write a homework assignment in Student's agenda due to time constraints or unforeseen circumstances. Occasionally, Student has to be reminded to bring the agenda to a teacher for signature and Student sometimes deliberately leaves the classroom without getting it signed.
43. Each morning, the special education teacher helps Student with organization and reminds Student to write down the homework assignment for each class, even if Student already finished the assignment in school. The special education teacher also spot checks Student's agenda for completed entries and sees Student in the morning for response to intervention and in the afternoon for math class.
44. At the end of day check-out, the IEP requires staff to review Student's agenda for completeness and confirmation Student has the materials needed for homework assignments.
45. The homeroom teacher serves as Student's end of day check-out staff for the 2019 -2020 school year. The homeroom teacher reported Student does not require much support with organization, and Student occasionally needs a prompt to write things down in the agenda or to return to the locker for homework materials. Most of the homework assignments for ELA, social studies, and science are on Student's Chromebook, which Student takes home daily.
46. If the homeroom teacher notices an agenda entry without a content teacher's signature at end of the day check-out, the homeroom teacher directs Student to return to the content teacher for review and signature of the agenda for that class.
47. The educational diagnostician served as the check-out staff for Student during the 2018-2019 school year, and also reported Student rarely needed to return to the locker for materials and did not need much help with organization.
48. Student is progressing in organization and task completion skills through the use of the agenda. Progress data for the second quarterly benchmark, dated January 17, 2020, reflects Student completed seventy-six percent (76%) of grade level tasks using the agenda and is close to mastery of the executive functioning goal.

### **Teacher Prompts for Homework Submission**

49. In order to address Student's executive functioning, the IEP states Student may need teacher prompting in the form of reminders to turn in completed assignments.

50. Parent diligently reviews Student's performance on assignments, tests, and quizzes on Home Access Center and questions teachers if it appears Student has not turned in an assignment or lost points or credit.
51. Each week, the special education teacher reviews the assignments on Home Access Center with Student to highlight any assignment Student has not submitted, typically through Schoology. The special education teacher reported Student will realize the assignment was already completed, but not submitted, and Student then submits it.
52. The math teacher reported Student is not prompted to turn in assignments because Student submits all assignments without reminders.
53. The ELA and science teachers prompt Student to turn in assignments, and most assignments are submitted by Student on time.
54. The social studies teacher reported Student is prompted when needed, and Student has turned in most assignments on time without prompting.
55. The teachers reported Student has not lost points for submitting late assignments in math, science, or social studies. Student lost points for submitting a late assignment in ELA during the first marking period.
56. Teachers are aware of Student's executive functioning needs and the IEP provisions requiring support for organization, teacher prompts for turning in assignments, and other supports.

## CONCLUSIONS

### **A. Substantial Implementation of Student's IEP and Provision of FAPE**

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 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 (8<sup>th</sup> 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). The implementation failure must be material and substantive.

In this case, I find the District is substantially implementing Student's IEP through the supports, services, accommodations, and modifications outlined in the IEP and evidenced by Student's meaningful educational progress. The teachers have a copy of Student's IEP and described how the IEP is being implemented in the content classes. Instructional staff demonstrated knowledge of Student's disability and executive functioning needs, and the services and supports Student requires. Teachers are prompting Student to turn in homework assignments as needed. Student is not losing points or credit for turning in late assignments, with the exception of an assignment in ELA for the first marking period. Student is consistently making progress toward mastery of IEP goals and receiving passing scores on standardized assessments. Student is also receiving REDACTED and REDACTED in all content classes including performance on summative and formative assessments, quizzes, tests, classroom assignments, and homework assignments and projects. Student is meeting grade level expectations and making meaningful educational progress. The District is meeting its obligation to provide FAPE to Student under Part B of the IDEA and corresponding Delaware law.

While I find no substantive denial of FAPE to Student, I do find the District has committed procedural violations of the IDEA related to implementation of specific provisions in Student's IEP, namely the use of visual and audio visual aids for Student and consistent use of the agenda.

Teachers are knowledgeable of the provision in Student's IEP requiring that visual and audio visual aids be provided to Student upon request. However, the IEP provision does not state with specificity what support Student requires based on Student's disability and unique educational needs, and how it differs from the support provided to all students. The IEP provision has no specificity regarding the type of visual or audio visual aid Student requires based on the content of classes or the assignments and assessments given, and how Student may access the visual and audio visual aid, and whether Student needs to be prompted. Teachers should know, based on data and assessment, whether Student needs a particular visual or audio visual aid to benefit from instruction and should not solely rely on Student to raise the request for the aid. Parent correctly states the IEP should describe Student's educational needs for visual and audio visual aids with specificity and provide clarity for instructional staff to ensure the support is provided to Student,

to the extent it is needed. ***On this basis, I find a procedural violation of the IDEA related to IEP implementation and the provision of visual and audio visual aids provided to Student.***

In addition, Student's IEP explicitly requires that teachers remind Student to copy homework assignments into the agenda, and provide staff support to make sure the agenda is filled out and signed by staff. Parent provided examples from Student's agenda, dated September through November 2019, of occasions when content teachers had not initialed Student's agenda entries and occasions when Student had not written down the homework assignment legibly or the entries were written by teachers. In this respect, the District was not implementing the provision of Student's IEP related to use of the agenda for executive functioning in a consistent manner from September through November 2019. 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 unforeseen circumstances. But overall, Student, Parent, and the private tutor require the consistent use of the agenda to support Student's executive functioning needs. ***On this basis, I find a procedural violation of the IDEA related to IEP implementation and consistency in use of the agenda for Student's executive functioning needs.***

### **CORRECTIVE ACTION**

#### **Student Level Corrective Action**

1. On or before **March 31, 2020**, the District shall assess Student's educational need for visual and audio visual aids based on data.
2. On or before **April 20, 2020**, the District shall conduct an IEP team meeting to discuss the results, and revise Student's IEP, as warranted, with specificity to describe the visual and audio visual aids Student requires based on Student's disability and the content of classes and the assessments and assignments being given, and how Student may access the aids, and whether Student needs to be prompted. Any revision to the IEP should clarify for teachers, based on data and assessment, whether Student needs a particular visual or audio visual aid to benefit from instruction and should not solely rely on Student to raise the request for the aid.
3. On or before **April 20, 2020**, the District shall conduct an IEP team meeting to specifically address the consistent use of Student's agenda based on the conclusions identified in this decision. 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 may include corrective action steps already taken. The District shall also ensure data is collected to monitor the consistent use of Student's agenda by instructional staff.

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 assessments and protocols for evaluating the needs of a student with a disability for visual and audio visual aids and how the aids must be addressed in the IEP with clarity as stated in this decision; and
  - (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