

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT  
STATE COMPLAINT RESOLUTION**

**DE SC 20-09 (March 6, 2020)**

On January 6, 2020, Parent filed a complaint with the Delaware Department of Education (Department) alleging the Charter School (the Charter School) violated Part B of the Individuals with Disabilities Education Act (IDEA) and implementing state and federal regulations with respect to Student. The complaint also alleges violations of Section 504 of the Rehabilitation Act. The allegations related to Student's rights under Section 504 of the Rehabilitation Act are not addressed in this decision because the scope of the Department's investigation is whether the Charter School violated Part B of the IDEA and corresponding state and federal regulations.

The complaint has been investigated as required by federal regulations at 34 C.F.R. § 300.151 to § 300.153 and Department regulations at 14 DE Admin. Code § 923.51.0 to § 53.0. The investigation included a review of Student's educational records, staff correspondence, and documents provided by Parent and the Charter School related to the issues in the complaint. Interviews were also conducted with Parent and relevant school staff.

All records and information provided by Parent and the Charter School were reviewed and considered. To the extent certain facts are not included in the decision, the facts were deemed not relevant or material to address the issues stated in the complaint.

**COMPLAINT ALLEGATIONS**

The complaint alleges:

- (1) Student's suspension for a behavioral incident on October 24, 2019 was in violation of the Charter School's written discipline policy and discriminatory based on Student's race and disability.
- (2) Student was suspended out of school without a manifestation determination.
- (3) A meeting to determine if Student was eligible for special education and related services was not completed within the required timeline.
- (4) The Charter School violated its written policy by failing to notify Parent of Student's failing grades for the first marking period.

## **FINDINGS OF FACT**

1. Student is REDACTED (REDACTED) years of age and currently attends REDACTED (REDACTED) grade at the Charter School.

### **Educational Records**

2. According to DELSIS, Student received educational services in the School District from grades REDACTED (REDACTED) through REDACTED (REDACTED). Student was identified as a student with a disability under the classification of “Learning Disability” as defined in 14 DE Admin Code § 925.6.12.
3. A prior written notice issued on August 20, 2015 reflects Student no longer qualified for services under the IDEA and proposed a Section 504 Plan as most appropriate for Student.
4. Throughout grades REDACTED (REDACTED) and REDACTED (REDACTED), Student attended the Charter School 1 and the Charter School 2 REDACTED. DELSIS does not record any IDEA or Section 504 services received by Student at these schools.
5. Parent reported that the Charter School 2 implemented a Section 504 Plan on October 31, 2017. The Charter School 2 closed in June 2019. Student was a rising REDACTED (REDACTED) grader.
6. For Student’s REDACTED (REDACTED) grade year, Parent reported Student made application to both the Charter School 3 (Charter School 3) and the Charter School. Student was accepted to attend both schools and chose to attend the Charter School.
7. On August 1, 2019, Student enrolled at the Charter School. The registration form indicated Student had neither an IEP nor Section 504 Plan. The last school attended was the Charter School 2.
8. Parent also signed the Charter School’s release of records form, and it was sent to Charter School 2 for Student’s records.
9. Student started attending the Charter School on Tuesday, August 27, 2019.
10. The Charter School reported it received Student’s cumulative records up until August 20, 2015 from the School District, and the records reflected Student was a regular education student.
11. On November 3, 2019, the Director of Special Education (Director) sent an E-mail to REDACTED requesting Student’s Section 504 Plan from Charter School 2 REDACTED.

12. On December 10, 2019, Director also E-mailed Charter School 1 to request Student's 504 Plan. Charter School 1 responded it had a meeting when Student enrolled at the school and the team determined Student did not qualify for a Section 504 Plan. The Parent confirmed these facts.
13. Parent shared a copy of a December 12, 2019 E-mail received from REDACTED informing Parent Student's cumulative records were taken to Charter School 3 since that was the school the Student was planning to attend. Since Student did not attend, Charter School 3 reported to REDACTED Student's cumulative records were sent, via state mail, to the Charter School on September 5, 2019 according to the transfer records at Charter School 3.
14. The Charter School reported it never received Student's cumulative records other than those from the School District, which were dated prior to August 20, 2015.

### **Discipline Incident**

15. On October 24, 2019, Parent received a phone call from the Principal indicating there was a behavior incident at school and Student needed to be picked up by Parent.
16. Parent went to School to pick up Student. Principal reported that Student was riding a skateboard indoors, refused to follow various teacher and administrator commands, and inappropriately pushed and grabbed a teacher. Principal advised that Student's violation of the Charter School's code of conduct resulted in a suspension pending further investigation. Parent would be contacted in three (3) days.
17. On October 25, 2019, Principal gathered written statements from teacher witnesses and was still awaiting written statement from the teacher involved in the incident. Principal called Parent and said the Charter School was still conducting an investigation and the Charter School would contact Parent in two (2) days. Parent was told Student could not return to the Charter School until October 29, 2019.
18. On October 27, 2019, Principal called Parent and said the investigation was still ongoing and Parent would be contacted in two (2) days. Parent was told Student was not to return to the Charter School until school staff called again.
19. On October 29, 2019, Principal called Parent and said Student was to be recommended for expulsion to the Head of the School.
20. During the conversation, Parent requested copies of Student's and teachers' written incident statements and asked to view the video. Parent was told an appointment needed to be scheduled with the Head of the School to receive the written incident statements and view the video.

21. On October 30, 2019, Principal sent Parent an E-mail informing Parent that a building level conference was tentatively scheduled for October 31, 2019. Parent agreed to the time and date and attended the conference.
22. On October 31, 2019, Parent met with Principal and Assistant Principal to review the written incident statements and view the video. Parent read Student's statement and Principal read a summary of the teachers' statements. Teachers' statements included teacher involved in the incident and three (3) other teachers who witnessed the incident. Principal indicated Student was suspended and the Charter School would be moving forward with a recommendation for expulsion.
23. At this meeting, Parent advised Student had a Section 504 Plan from Charter School 2 and requested Student be given a Section 504 Plan at the Charter School. Parent also handed Principal a letter requesting copies of Student's regular and special education records, as well as the October 24, 2019 written incident statements.
24. Later that afternoon, Parent E-mailed Principal and requested that School schedule a Section 504 meeting before taking any disciplinary action. Parent stated that Student's behavior may have been a manifestation of Student's disability.
25. That evening, Parent faxed a letter to the Principal requesting a special education evaluation in accordance with Part B of the IDEA and Section 504 of the Rehabilitation Act. Parent also requested, in writing, copies of the Student's and teachers' written incident statements, as well as a copy of the video.
26. On November 1, 2019, Director called Parent and reported the Charter School was no longer recommending Student for expulsion and Student was allowed to return to the Charter School on November 4, 2019.
27. Director informed Parent that upon not finding documentation of eligibility under IDEA or Section 504, a Section 504 eligibility meeting would be scheduled. Director asked Parent for copy of Student's Section 504 Plan or medical diagnosis for ADHD. Parent again requested copies of written incident statements and a copy of the video.
28. After the phone call, Parent sent E-mail to Principal and Director summarizing phone conversation. Parent again requested written incident statements, a manifestation determination meeting, an evaluation to determine eligibility for special education under IDEA Part B, and a meeting to develop a Section 504 Plan.
29. Parent's E-mail also contained a February 8, 2019 copy of the Student's College Board SAT accommodations approval letter and a May 7, 2012 physician's diagnosis for Student's ADHD.
30. On November 4, 2019, Student returned to the Charter School and school staff reported Student's records reflected three (3) days out of school suspension and three (3) days excused absences.

31. On this same day, Parent E-mailed Principal to inquire if there was any work that Student needed to make-up from Student's six (6) days of out of school suspension.
32. In response, on November 4, 2019, Principal sent E-mail to Student's teachers to address missed work and to allow the Student a reasonable extension to complete the work.
33. A prior written notice dated November 4, 2019 was E-mailed to Parent indicating the Charter School's proposal to evaluate Student to determine eligibility for special education and related services. On November 6, 2019, Parent signed the permission to evaluate for special education and related services.
34. On November 12, 2019, Parent attended a meeting to determine Student's eligibility for and development of a Section 504 Plan. The team determined Student's learning was impacted by Student's ADD diagnosis and a Section 504 accommodation plan was developed.
35. At this meeting, Parent discovered Student was failing four (4) subjects for the first (1<sup>st</sup>) marking period, and had one (1) incomplete.
36. Parent also reported not having access codes to Schoology and Home Access and had not received access when Student enrolled at the Charter School. The Charter School's Handbook states that "Parent/Guardian access codes are provided by the end of the first two weeks of school."
37. On November 13, 2019, Parent was E-mailed school access codes for Schoology and Home Access.
38. On November 13, 2019, Parent sent Principal an E-mail with follow-up additions to the Section 504 Plan developed on November 12, 2019. Parent was in agreement with the initial Section 504 Plan and added accommodations of both weekly behavior and academic progress reports. Parent again requested copies of the October 24, 2019 written incident statements and a copy of the video.
39. Also in this E-mail, Parent requested a conference with the Head of the School and Student's teachers regarding Student's first marking period grades.
40. On November 15, 2019, Parent received Student's first marking period report card. The report card indicated Student's grades ranged from REDACTED- to REDACTED.
41. On November 25, 2019, Parent met with Student's teachers and stated no teacher had notified Parent that Student was failing. Parent inquired as to why Student was failing. Teachers responded that Student was missing assignments, had low test scores, needed to ask more questions in class, and did not put forth effort. Teachers stated that Student could make up and/or redo the missed assignments.

42. At the conclusion of the teacher meeting, Parent then met with Principal and Head of the School. Parent inquired as to why teachers did not contact Parent when Student was failing. Parent also stated Parent was not in agreement with the recorded six (6) days of suspensions. As a result, the Charter School modified the conduct referral form and listed the out of school suspension as lasting three (3) days, and the Charter School reduced the incident from assault to offensive touching.
43. At this meeting, Parent received copies of teachers' written incident statements and Student's written statement. Parent stated the video did not show Student touching the teacher, thus Parent did not agree with the teachers' written statements.
44. Parent also stated there was no communication from the Charter School to home of either the November 15, 2019 nor the January 15, 2020 behavior incidents.
45. During the investigator's interview, Parent alleged that the Charter School was not following the Section 504 Plan as written, specially contacting Parent when Student had missing assignments. Parent alleges the noncompliance resulted in Student's failing second interim report card grades.
46. Principal reported to the investigator Student's Section 504 Plan was uploaded into eSchoolPLUS on November 26, 2019 and as of December 2, 2019, all of the Student's teachers had access to the plan.
47. Beginning on January 6, 2020, Student's teachers sent E-mails to Parent communicating Student's progress.
48. Parent filed the state complaint on January 6, 2020.
49. An eligibility meeting for special education and related services was held on January 15, 2020. The Student was identified as a student with a disability under the disability classification of "Other Health Impairment" as defined in 14 DE Admin Code § 925.6.14.
50. At this meeting, Parent brought a copy of the October 31, 2017 Section 504 Plan from Charter School 2. Parent told investigator Parent was unable to find the paperwork of Student's prior eligibility until this date.
51. The IEP team meeting to develop Student's IEP was scheduled for January 30, 2020.

## **CONCLUSIONS**

### **A. No Violation of Part B of the IDEA Related to Student's Suspension.**

Students with disabilities determined eligible for special education and related services under the IDEA are entitled to the IDEA's procedural safeguards. In addition, the U.S. Department of Education's Office of Special Education and Rehabilitative Services issued a letter on January 29, 2019, which addresses the protections of children not yet determined eligible for special education

and related services under the IDEA (*attached*). The letter states, “If a child engages in a behavior that violates a code of student conduct prior to a determination of his or her eligibility for special education and related services and the public agency is deemed to have knowledge of the child’s disability, the child may assert the disciplinary protections under IDEA, including the manifestation determination review (MDR) provisions under 20 U.S.C. § 1415(k)(1)(E) and 34 C.F.R. § 300.530(e) even if the child has not been found eligible for special education and related services.” On October 31, 2019, Parent faxed a letter to the Principal requesting a special education evaluation. The behavior incident occurred on October 24, 2019. On January 15, 2020, Student was found eligible for special education and related services. Thus Student was entitled to the disciplinary protections of the IDEA beginning on October 31, 2019 which was after the behavior incident. *See*, 14 DE Admin Code 926.4.1; 34 C.F.R. § 504(a).

School officials may remove a student with a disability from the current educational placement to another educational setting, or suspension, for not more than ten (10) consecutive school days, or for not more than ten (10) cumulative days in the same school year for separate behavioral incidents, as long as it does not constitute a pattern resulting in a change of placement. *See*, 34 C.F.R. § 300.530(b); 14 DE Admin Code § 926.30.2.

If a change in educational placement is sought based on the student’s violation of the code of conduct, the school must conduct a manifestation determination to decide if the behavioral incident was a manifestation of the student’s disability. If the behavior was a manifestation of the student’s disability, the school may not proceed with the change in educational placement to the disciplinary setting. If the behavior was not a manifestation of the student’s disability, the school may proceed with the change in educational placement to the disciplinary setting with the continued provision of special education and related services consistent with the student’s IEP. *See*, 34 C.F.R. § 300.530; 14 DE Admin Code § 926.30.5.

In this case, Student was suspended for six (6) days out of school for a behavioral incident on October 24, 2019. At the time of the behavioral incident, Student was not identified as a special education student and the request for an evaluation was not made until October 31, 2019 which was after the behavior incident occurred. Thus, the IDEA’s disciplinary procedural safeguards were not applicable to Student at the time of the behavioral incident. In addition, the Charter School did not change Student’s educational placement for disciplinary reasons as a result of the October 24, 2019 behavioral incident. It is undisputed Student returned to school after six (6) days out of school suspension. There was no requirement under Part B of the IDEA to conduct a manifestation determination because there was no educational change in placement for disciplinary reasons. **As a result, I find no violation of the IDEA and corresponding state and federal regulations pertaining to the disciplinary procedural safeguards.**

The complaint also alleges the Charter School failed to conduct a manifestation determination prior to Student’s disciplinary removal in violation of Section 504 of the Rehabilitation Act. As stated, the allegations related to Student’s rights under Section 504 of the Rehabilitation Act are not addressed in this decision because the scope of the Department’s investigation is whether the Charter School violated Part B of the IDEA and state and federal regulations.

In addition, the complaint alleges Student's suspension for the October 24, 2019 incident was in violation of the Charter School's discipline policy and discriminatory based on race and disability. However, the Department's complaint investigation is limited to allegations stating a violation of Part B of the IDEA and state and federal regulations.

For information on filing a complaint for alleged violations of Section 504 of the Rehabilitation Act and alleged discrimination based on disability, Parent may contact the Office for Civil Rights at <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>.

#### **B. Inaccuracy of Student's Educational Records Related to Disciplinary Removals**

It is important for schools to accurately document disciplinary removals for students with disabilities to ensure compliance with IDEA's procedural safeguards. In this case, Student served six (6) days out of school suspension on October 25, October 28, October 29, October 30, October 31, and November 1, 2019. In response to Parent's challenge about the appropriateness of the removals, the Charter School artificially revised Student's disciplinary records to reflect three (3) days out of school suspension, when Student had actually served six (6) days out of school suspension. Student is entitled to the procedural safeguards of the IDEA related to disciplinary removals, and it is imperative the Charter School maintain accurate records reflecting the instructional time missed by Student as a result of behavior and disciplinary removals. **As a result, I find a violation of the IDEA and corresponding state and federal regulations relating to the accuracy of educational records maintained for Student.**

#### **C. Student's Special Education Evaluation and Eligibility Decision Were Completed Within Required Timeline**

State and federal regulations require public charter schools to conduct a full and individual initial evaluation prior to the initial provision of special education and related services. An initial evaluation must be completed in "a manner to preclude undue delay." *See*, 34 C.F.R. § 300.301(c) and 14 DE Admin Code § 925.2.1. Within forty-five (45) school days or ninety (90) calendar days, whichever is less, of receiving parental consent to evaluate, the initial evaluation must be conducted, and the student's eligibility must be determined at a meeting convened for that purpose. *See*, 14 DE Admin Code § 925.2.3.

In this case, Parent requested Student receive a special education evaluation pursuant to Part B of the IDEA on October 31, 2019. The Charter School promptly responded and provided Parent with prior written notice on November 4, 2019 agreeing to evaluate Student's eligibility for special education and related services. On November 6, 2019, Parent provided written consent to evaluate. The evaluation was completed and Student's eligibility for Part B services was determined at the January 15, 2020 meeting. Therefore, the special evaluation and eligibility decision were completed within the timeline required by 34 C.F.R. § 300.301(c) and 14 DE Admin Code § 925.2.1. **As a result, I find no violation of the IDEA or corresponding state and federal regulations regarding the timeliness of Student's special education evaluation and eligibility decision.**

**D. No Violation of Part B of the IDEA Related to Notification of Student's Failing Grades For the First Marking Period**

The complaint alleges Parent first learned Student was failing four (4) subjects at the November 12, 2019 meeting. The Charter School staff also learned Parent did not have the access codes to view Student's daily grades for classwork and assessments online through Home Access and Schoology. The Charter School promptly provided Parent with the access codes on November 13, 2019, and the report cards were issued on November 15, 2019. **I find no violation of Part B of the IDEA and state and federal regulations related to the allegation the Charter School failed to inform Parent of Student's failing grades.**

**CORRECTIVE ACTION**

**Student Level Corrective Action**

1. On or before **April 3, 2020**, the Charter School shall amend Student's educational records to reflect the six (6) days out of school suspension Student served for the October 24, 2019 behavioral incident. The amendment is necessary because Student served six (6) days out of school suspension for the behavioral incident and missed instructional time. Accurate records of disciplinary removals must be maintained to ensure Student receives the disciplinary protections of the IDEA.
2. The District shall provide copies of the amended records to Parent and the Director of the Exceptional Children Resources Work Group on before **April 3, 2020**.

**School Level Corrective Action**

1. The Charter School shall provide professional development to special education staff in the school, and school administrators, regarding the responsibility to maintain accurate records of disciplinary removals pursuant to the IDEA and the disciplinary procedural safeguards of the IDEA.
2. The Charter School shall provide evidence of completing the corrective action to the Director of the Exceptional Children Resources Work Group on before **May 1, 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 **May 11, 2020**.

By:

Assigned Investigator



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 29, 2019

Judy Nathan  
Executive Deputy Counsel for  
Risk Management and Litigation  
Office of Legal Services  
52 Chambers Street, Room 308  
New York, NY 10007

Dear Ms. Nathan:

This letter responds to your correspondence to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP). In that letter, you asked OSEP to provide clarification on a series of questions regarding the protections for children not yet determined eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA). Each of your questions is answered separately below in this response. We regret the delay in responding.

We note that section 607(d) of IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

**Question 1:** Once it has been established that a child is a child who the local educational agency (LEA) is deemed to know is a child with a disability; can the LEA postpone the manifestation determination meeting until after the completion of the initial evaluation or the initial individualized education program (IEP) Team meeting? Must the evaluation, in these cases, be expedited?

**Response:** Under 20 U.S.C. § 1415(k)(5)(B), 34 C.F.R. § 300.534(b), a school is deemed to have knowledge that a student has a disability when –

- (i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (ii) the parent of the child requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or
- (iii) the teacher of the child, or other personnel of the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2600

[www.ed.gov](http://www.ed.gov)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

director of special education of such agency or to other supervisory personnel of the agency.<sup>1</sup>

If a child engages in behavior that violates a code of student conduct prior to a determination of his or her eligibility for special education and related services and the public agency is deemed to have knowledge of the child's disability, the child may assert the disciplinary protections under IDEA, including the manifestation determination review (MDR) provisions under 20 U.S.C. § 1415(k)(1)(E) and 34 C.F.R. § 300.530(e) even if the child has not been found eligible for special education and related services. Thus, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team (as determined by the parent and the LEA) must conduct an MDR. This provision does not include an exception to allow additional time to complete an evaluation prior to conducting the MDR.

While an LEA may choose or find it necessary to expedite evaluations in these circumstances, under IDEA expedited evaluations are only required in situations where the LEA is not deemed to have knowledge that the child may have a disability and a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 34 C.F.R. § 300.530. See 20 U.S.C. § 1415(k)(5)(D).

**Question 2:** If the LEA cannot postpone the MDR pending completion of the initial evaluation, how should the LEA conduct the MDR, given the fact that: 1) the LEA may have little to no information about the student's disability; and 2) the purpose of the MDR is to determine whether the behavior is the result of the student's disability?

**Response:** Under 20 U.S.C. § 1415(k)(1)(E)(i) and 34 C.F.R. §300.530(e)(1)(ii), when conducting the MDR, the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA), must review all relevant information in the child's file, including any teacher observations and any relevant information provided by the parents, to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability.<sup>2</sup> We appreciate that the LEA would not have the IEP to use in its assessment of whether the behavior was a manifestation of the child's disability in these situations. See 20 U.S.C. § 1415(k)(1)(E)(i)(II). Nevertheless, it would still be possible for the LEA to convene a group of knowledgeable persons, as determined by the parent and the LEA, who would be able to conduct the MDR even before the LEA has made its eligibility determination, if the LEA cannot conduct the evaluation before the MDR. The group would

---

<sup>1</sup> Under 20 U.S.C. § 1415(k)(5)(C), the LEA is considered not to have knowledge that a child is a child with a disability if the parent has not allowed the evaluation of the child under Part B of the IDEA, the parent has refused services, or if the child is evaluated and determined not to be a child with a disability under Part B of the IDEA. In these instances, the child would be subject to the same disciplinary measures applicable to children without disabilities.

<sup>2</sup> Because the LEA has not yet developed an IEP for the child, the LEA would be unable to determine whether the child's conduct was the direct result of the LEA's failure to implement the child's IEP. See 20 U.S.C. § 1415(k)(1)(E)(i)(II) and 34 C.F.R. § 300.534(e)(1)(ii).

likely consider the information that served as the LEA's basis of knowledge that the child may be a child with a disability under IDEA, such as concerns expressed by a parent, a teacher or other LEA personnel about a pattern of behavior demonstrated by the child. Based upon its review and consideration of the available information, the group would determine whether the conduct in question was caused by, or had a direct and substantial relationship to the child's suspected disability. There is nothing in IDEA that would prevent the LEA from conducting the MDR in connection with its evaluation and eligibility determination, so long as the MDR is conducted within 10 school days of the decision to change the student's placement due to a violation of a student code of conduct.

**Question 3:** Does posting the Procedural Safeguards notice on the LEA's web site and providing a link in the suspension notice letters constitute sufficient notice of a parent's rights to assert the due process protections?

**Response:** Under 20 U.S.C. § 1415(k)(1)(H) and 34 C.F.R. § 300.530(h), on the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and of all procedural safeguards accorded under Part B of IDEA. This is accomplished by providing the parents a copy of the procedural safeguards notice described in 20 U.S.C. § 1415(d) and 34 C.F.R. § 300.504(a). 34 C.F.R. § 300.504(a)(3). Although IDEA permits an LEA to post a copy of the procedural safeguards notice on its web site, the public agency would not meet its obligation to provide a parent the notice of procedural safeguards by simply directing a parent to the web site. Rather, a public agency must still offer parents a printed copy of the procedural safeguards notice. If, however, a parent declines the offered printed copy of the notice and indicates a clear preference to obtain the notice electronically on his or her own from the agency's web site, it would be reasonable for the public agency to document that it offered a printed copy of the notice and that the parent declined.

Posting the procedural safeguards notice on a public agency's web site is clearly optional and for the convenience of the public and does not replace the distribution requirements in IDEA. See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children With Disabilities; Final Rule 71 FR 46540, 46693 (August 14, 2006) available at: <https://www.gpo.gov/fdsys/pkg/FR-2006-08-14/pdf/06-6656.pdf>.

Please note that by copy of this letter, we are notifying Michael Scheinkman of this information. Mr. Scheinkman also wrote to this Office requesting guidance on the same issues raised in your correspondence related to the conduct of MDRs for children in asserting the protections under 20 U.S.C. § 1415(k)(5). In addition, by copy of this letter we are notifying the New York State Education Department of the information in this letter for their follow up on your inquiry and our response.

If you have any further questions, please do not hesitate to contact Lisa Pagano of my staff at 202-245-7413 or by email at [Lisa.Pagano@ed.gov](mailto:Lisa.Pagano@ed.gov).

Sincerely,

/s/

Laurie VanderPloeg  
Director  
Office of Special Education Programs

cc: Michael Scheinkman  
Davis Polk & Wardwell, LLP

Christopher Suriano  
State Director of Special Education