

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC #21-03

Date issued: April 20, 2021

On February 19, 2021, REDACTED filed a complaint (Complaint) with the Delaware Department of Education (Department) on behalf of Student and REDACTED Mother against the REDACTED STATE AGENCY which includes REDACTED, the Education Unit within the REDACTED, REDACTED 1, REDACTED 2, and the REDACTED 3, alleging failure to comply with the Individuals with Disabilities Education Act (IDEA) requirement to provide a Free Appropriate Public Education (FAPE) to Student during the period of June 5, 2019 until approximately January 7, 2020.¹ The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the Department's regulations at 14 DE Admin Code §§ 923.51.0 to 53.0.

The investigation included: a review of Student's educational records presented as part of this State Complaint provided by REDACTED, REDACTED STATE AGENCY and REDACTED; interviews with Mother, REDACTED School 1 English Language Arts Teacher (ELA Teacher), and REDACTED STATE AGENCY Special Education Supervisor; email correspondence with REDACTED STATE AGENCY Special Education Supervisor, REDACTED School 1 School Principal, REDACTED STATE AGENCY Educational Diagnostician and REDACTED STATE AGENCY Counsel.

In accordance with IDEA and corresponding state and federal regulations, the complaint must allege violations that occurred not more than one (1) year prior to the date the Department received the complaint. However, the parties entered a tolling agreement on June 4, 2020.

COMPLAINT ALLEGATIONS

The Complaint alleges:

- (1) REDACTED STATE AGENCY denied Student FAPE when they failed to provide Student with special education services in a special education setting between June 5, 2019 and January 7, 2020 when they removed Student from a special education setting without providing prior written notice of this decision.

- (2) REDACTED STATE AGENCY failed to provide Student with appropriate special education services between June 5, 2019 until approximately January 7, 2020 when they suspended reading comprehensions goals and supports and did not replace them with comparable alternatives.

¹ The complaint decision identifies some people and places generally, to protect personally identifiable information about the student from unauthorized disclosure. An index of names is attached for the benefit of the individuals and agencies involved in the investigation. The index must be removed before the complaint decision is released as a public record.

FINDING OF FACT

A. Special Education Setting

1. Student is REDACTED years-old and receives special education services as a student with a primary educational classification of Other Health Impairment (OHI) and a secondary educational classification of Learning Disability (LD). *See*, 14 Del. Admin. Code § 925.
2. On October 30, 2018, Student's IEP team, at REDACTED LEA SCHOOL within the REDACTED DISTRICT (LEA), created a new IEP for Student (10/30/2018 IEP). The 10/30/18 IEP stated that Student received academic instruction in the REDACTED CLASSROOM at REDACTED LEA SCHOOL and received special education services as a student with a Learning Disability. Additionally, The REDACTED LEA SCHOOL reviewed Student's Behavior Intervention Plan (BIP), which had been revised on March 14, 2018. Student's BIP required increased proximity by teacher with Student when Student appeared off-task or disruptive, seating near the area of instruction and away from distractions, a high degree of attention during triggering situations, and receipt of all instruction in a small group setting. (*Complaint Exhibit B.*)
3. On April 27, 2019, Student was transferred into the custody of REDACTED STATE AGENCY. The Education Unit provides educational services to youth in the custody of REDACTED STATE AGENCY who are placed at REDACTED 1, REDACTED 2, and REDACTED 3.
4. Between April 27, 2019 and January 7, 2020, Student was placed primarily at REDACTED 1, transferred to REDACTED 3, then to REDACTED 2 and returned to REDACTED 1. These transfers were due to additional charges Student incurred. According to the REDACTED STATE AGENCY Special Education Supervisor, Student received educational services at REDACTED 3 and REDACTED 2 for approximately a month each and otherwise received educational services at the REDACTED SCHOOL 1, which is located on the REDACTED 1 campus.
5. In June 2019, Student was attending school at the REDACTED SCHOOL 1.
6. REDACTED STATE AGENCY held an IEP meeting for Student on June 5, 2019. At the June 5, 2019 meeting, an IEP was developed, including a new reading comprehension goal. Mother participated by phone in the meeting and signed the Prior Written Notice (PWN). The PWN proposed actions including the following:
 - Review and acceptance of the Student's Evaluation Summary Report which indicated a primary classification change to Other Health Impairment (OHI) and secondary classification of Learning Disability (LD);
 - Change of placement from a D setting to a G setting due to a court order;
 - Discontinue 10/30/2018 IEP reading comprehension goal and
 - Development of a new reading comprehension goal.

7. Special Education Supervisor and REDACTED STATE AGENCY Counsel clarified the correctional facilities G setting is used to indicate the juvenile is in a correctional facility. The juvenile is then assessed to determine what the juvenile's educational needs are and whether those needs can be met in the small classroom settings in the facilities, or if they require a more specialized setting to meet the identified needs. The maximum teacher to student ratio in REDACTED STATE AGENCY is 1:8.
8. ELA Teacher reported that while he could not be absolutely certain the time frame coincided with that of the Complaint, due to the 18-month lapse of time, he recalled having the Student in a class of three students where the other students were primarily working independently. ELA Teacher reported Student's desk was close to the ELA Teacher's desk enabling the ELA Teacher to provide individual instructional support to Student beyond the 50 minutes of specialized instruction per week required by the IEP. The ELA Teacher noted Student demonstrated marked progress during that period of time. The ELA Teacher also stated the Student's goals were adequately being met in the class.
9. The ELA Teacher stated on average class size is two to four students, with some students working independently. The ELA Teacher also confirmed it is not unusual for students to move in and out of his class for periods of time due to transfer to other facility locations.

B. Reading Comprehensions Goals and Supports

10. According to REDACTED STATE AGENCY Special Education Supervisor, Student received special education services at the REDACTED SCHOOL 1 for at least four months between June 5, 2019 and January 7, 2020 with two brief transfers to REDACTED 3 and REDACTED 2 due to additional charges incurred by Student.
11. The REDACTED STATE AGENCY Special Education Supervisor reported when a student moves between REDACTED STATE AGENCY facilities, it is considered a continuation of enrollment. Thus, special education services continue to be provided and the IEP continues to be implemented.
12. As part of the June 5, 2019 IEP meeting, the IEP team reviewed the STAR reading assessment results, administered by REDACTED STATE AGENCY. The IEP team also reviewed Student's October 30, 2018 IEP, including assessment documents relevant to Student's reading comprehension skills and goal.
13. Student's score on the STAR reading assessment was REDACTED (Scaled Score) REDACTED (GE) and REDACTED (Lexile Range).

14. The following information and documentation were included in the October 30, 2018 IEP:

- a. The Scholastic Reading Inventory (SRI) is noted in the Screening Assessment Information section and described as an assessment designed to evaluate students' reading ability, monitor reading progress and match students to books at their reading level; Documented Student performance on this measure between September 20, 2016 and May 10, 2018 was as follows:

SRI Administration Date	Lexile Score
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED

- b. As part of Student's three-year evaluation to determine continued eligibility for special education services results, the Student was administered the Reading Comprehension subtest of the Wechsler Individualized Achievement Test – Third Edition (WIAT-III) which measured literal and inferential questions. The Student performed in the below average range (SS=REDACTED; REDACTED percentile). The examiner noted the Student “correctly responded to more literal questions where the answer is found in the text, in comparison to inferential questions that required [the Student] to read the text carefully and draw conclusions based on hints and clues given.”
- c. Reading Comprehension - Vocabulary /Inferential Learning & Drawing Conclusions Annual Goal: “When given a reading comprehension assessment, [the Student] will score REDACTED Data may be obtained using the Scholastic Reading Inventory (SRI) or other assessment that determines reading ability.” Specialized instruction related to Reading Comprehension be provided to the Student three times per week for 15 minutes per session.

15. At the June 5, 2019 IEP meeting, the IEP team made revisions to Student's October 30, 2018 IEP relevant to reading comprehension. The IEP team marked proposed changes on the October 30, 2018 IEP document. The following proposed revisions were then transferred and typed into the PWN dated June 5, 2019:

- a. The reading comprehension annual goal in the October 30, 2018 IEP was discontinued because Student had met the Annual Goal: “When given a reading comprehension assessment Student scoring a (REDACTED GE) or more using SRI or other assessment that determines reading ability.” Student's Present Level of Educational Performance (PLEP) for the October 30, 2018 was determined to be REDACTED Lexile Score (REDACTED GE).
- b. A targeted annual goal related to inferences was determined to be appropriate to improve Student's reading comprehension, based on current data and teacher

observations. The new annual goal was “Given a REDACTED grade reading assignment, [the Student] will be able to answer inferential questions about the text with REDACTED accuracy.”

- c. The accommodations are listed under “Unique Educational Needs and Characteristics” rather than in the “Services, Aids & Modifications” section.
 - d. Accommodations were determined by the IEP team to support student success relative to the new reading comprehension goal. Accommodations related to the Reading Comprehension Inferential Goal included: small group instruction, preferential seating to minimize distractions, extended time to complete tasks and assessments, multiple chances to redo/retake assignments/assessments, preview and review vocabulary and content, scaffolding, verbal instructions/ directions, read aloud questions/directions as requested for understanding, chunking of directions/tasks/assessments, refocusing/redirecting as needed, breaks as needed (at discretion of educational staff, graphic organizers, frequent check-ins, positive feedback, prompting as needed, text to speech when available, highlighter, other visual/auditory aides, teacher modeling, examples. Specialized instruction in acquiring the skills to make inferences in order to comprehend text was to be provided with a Frequency of 5 times a week and Duration of 10 minutes per session.
16. While in REDACTED STATE AGENCY custody, Student additionally attended a 50-minute Response to Intervention (RTI) class daily that provided targeted instruction in reading and/or math skills, including vocabulary and reading comprehension. This class is provided to every student in REDACTED STATE AGENCY custody.
17. The ELA Teacher explained the ELA Teacher’s determination of achievement of benchmarks for any student includes performance on formal test assessments (noting this is often multiple-choice questions for inference skills), student writings and teacher observation during student or class instruction/discussion. The ELA Teacher also reported that inferential skills are an important component of reading comprehension toward overall improved reading skills. The ELA Teacher stated Student’s Mother had not been in contact with the ELA Teacher at any point with questions or concerns about Student’s reading comprehension goal or progress.
18. On November 1, 2019, an annual review of the Student’s IEP was held at REDACTED 2. The original meeting was scheduled for October 21, 2019 at REDACTED 3 to be in compliance with the October 30th annual review due date. However, the meeting was rescheduled as Student had to be in court on that date and time. Mother participated in the IEP meeting by phone and signed the PWN at the November 1, 2019 IEP via email. REDACTED STATE AGENCY staff offered to review Parental Rights/Safeguards with Mother. Mother declined the review of parental rights.
19. At the November 1, 2019 IEP meeting, the IEP team reviewed current data, assessment results and teacher observations to update and/or develop new annual goals and benchmarks as follows:
- a. Student achieved the reading comprehension benchmarks and annual goal as detailed on the June 5, 2019 IEP by August 21, 2019. Therefore, the following new annual goal in Reading Comprehension/Answering Inferential Questions was developed at the November 1, 2019 IEP meeting: ”When given a REDACTED grade level text, the Student will be able to answer inferential questions about the text with

REDACTED accuracy as measured by classroom assignments and assessments. Student's Present Level of Educational Performance at that time was, "When Given a REDACTED grade level text the Student is able to answer inferential questions about the text with REDACTED accuracy as measured by classroom assignments and assessments." This evidenced a 10% improvement in Student performance between August 21, 2019 and November 1, 2019.

- b. The REDACTED STATE AGENCY Special Education Supervisor reported that while Marking Period 5 benchmark was met, teachers continued to address the area of need until the time of the annual review on November 1, 2019, which was held before the end of the first marking period.
- c. Accommodations for the new Reading Comprehension/Answering Inferential Questions Goal included: small group instruction, frequent checks for understanding, Dictionary and Thesaurus for spelling and vocabulary, distinct colored folders for each of the Student's classes, preferential seating, one-on-one assistance as needed, refocusing as needed, extra time up to 50% to complete assignments/assessments, chunking of instruction, assignments and assessments, graphic organizers, model expected behavior, positive reinforcement/praise for compliant behaviors, calculator, re-explain directions and expectations, use of instructional level materials for independent skill practice, one opportunity to redo failed assignments/assessments to obtain a passing grade, and preview and review of all vocabulary and content.
- d. The IEP team determined specialized instruction in answering inferential questions from grade level text was to be provided with a frequency of four sessions per week for ten minutes each session.

20. On November 22, 2019, Student's reading skills were assessed using the STAR reading assessment tool. Student's scores were REDACTED (Scaled Score), Instructional Reading Level REDACTED and a Lexile Range of REDACTED. Student's results were higher than Student's May 2, 2019 STAR assessment results.

21. In January 2020, Student transitioned from REDACTED STATE AGENCY custody back to LEA. Student currently follows a hybrid schedule, attending REDACTED LEA SCHOOL every other day for a full day of core courses and homebound instruction on alternate days.

CONCLUSIONS

Claim 1: Special Education Setting

Upon Student's transfer to REDACTED STATE AGENCY custody, the REDACTED was responsible for providing the Student with services comparable to those provided by in REDACTED LEA SCHOOL in Student's October 30, 2018 IEP. Within 60 days of Student's transfer into REDACTED STATE AGENCY custody, the REDACTED is required to adopt the previous IEP or develop and implement a new IEP. 14 DE Admin. C. § 925.23.4.1. and 34 C.F.R. § 300.323(e).

Mother alleges that REDACTED STATE AGENCY violated the IDEA and relevant Delaware State statutes and regulations by: (1) "remov[ing] Student from special education and plac[ing] Student fully in a general education setting while in REDACTED custody"; and (2) not "mentioning or explaining this change in the PWN for the June 5, 2019 IEP." *Complaint* at 8.

A local educational agency must give prior written notice to the parents of a child with a disability whenever it proposes to change the child's educational placement. 20 U.S.C. § 1415(b)(3); 34 CFR § 300.503(a)(1). A change in educational placement is defined as "a fundamental change in, or elimination of [,] a basic element of the education program." *Aikens v. D.C.*, 950 F. Supp. 2d 186, 191 (D.D.C. 2013) (internal citations omitted). Further, "maintaining a child's placement in an educational program that is *substantially and materially* similar to the former placement is not a change in placement." *Id.*

In this case, Student was remanded to the custody of REDACTED STATE AGENCY by Court Order not by the LEA. Student's move from REDACTED LEA SCHOOL to the REDACTED, *by itself*, was not a "change in placement" as defined by the IDEA. The question then becomes whether the educational program at REDACTED STATE AGENCY was *substantially and materially* similar to the former placement. All educational placements within correctional facilities are given a "G" setting placement. It is not a general education designation. Student attended the REDACTED School 1, in a class of three students, with the other two students primarily working independently. Student effectively had individual instruction from his teacher. Student's class structure at REDACTED School 1 was substantially and materially similar to that at The REDACTED LEA SCHOOL where Student's BIP required increased proximity when Student appeared off-task or disruptive; seating near the area of instruction and away from distractions; a high degree of attention during triggering situations; and receipt of all instruction in a small group setting.

Furthermore, Student evidenced progress in reading comprehension as demonstrated by improved reading scores REDACTED GE (SRI 10/18REDACTED LEA SCHOOL IEP); REDACTED GE (STAR REDACTED STATE AGENCY 05/19); REDACTED GE (STAR REDACTED STATE AGENCY 10/22/19). Grades in all courses reflected in Student's transcript presented at LEA Transition meeting (01/15/20) evidenced progress while Student was the in custody of REDACTED STATE AGENCY.

Mother participated in the IEP Meetings on June 5, 2019 and November 1, 2019, and received and signed the PWNs associated with those meetings. There appears to be confusion in the use of the label "setting." An IEP lists settings from A to G, with G representing the setting for all students in a correctional facility. The correctional facility provides only one option for a setting, "G." There is no further subset of the G setting that an IEP team uses to place a child in a correctional facility into either a general education classroom or a special education classroom or some hybrid

of both. Such level of detail is for students in an A to C setting, however no such delineation exists within the G setting. Student was provided appropriate services as evidenced by Student progress documented in Exhibits provided in the Complaint and Response.

For these reasons, this Investigator finds no violation of the IDEA or corresponding state and federal regulations.

Claim 2: Reading Comprehensions Goals and Supports

The IDEA and implementing state and federal regulations require school districts to provide a free appropriate public education (FAPE) to students with disabilities. 20 U.S.C. § 1401(9), 34 C.F.R. § 300.101(a), 14 DE Admin Code § 923.1.2. FAPE is defined by Delaware statute as:

Special education that is specially designed instruction, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and related services, as defined by the DDOE rules and regulations approved by the State Board of Education, and as may be required to assist a child with a disability to benefit from an education that:

- (a) Is provided at public expense, under public supervision and direction and without charge in the public school system;
- (b) Meets the standards of the Delaware Department of Education;
- (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 potential.

14 Del. C. § 3101(5).

The IDEA and implementing state and federal regulations also set forth requirements for development of an IEP with consideration of special factors. In the case of a child with limited reading proficiency, the IEP Team must consider the use of services, supports and evidence-based interventions to address those needs. 34 C.F.R. § 300.324(a)(3)(ii) and 14 Del. Admin Code § 925.24.2.7.

Additionally, the IEP team may address a child's needs through a statement of measurable annual goals in the IEP. *See*, 34 C.F.R. § 300.320(a)(2)(i) and 14 DE Admin Code § 925.20.1.2. The child's IEP may include a statement of the program modifications or supports for school personnel that will be provided to advance appropriately toward attaining the annual goals. 34 C.F.R. § 300.320(a)(4) and 14 Del. Admin Code § 925.20.1.4.

On June 5, 2019, the IEP team properly revised the Student's reading comprehension goal based on current available data including recent reading assessment scores and teacher observation and assessment of Student's current skills prior to the IEP meeting. This data included a STAR reading assessment on May 2, 2019 that resulted in a score that met Student's current annual goal established in the October 30, 2018 IEP. The revised reading comprehension goal targeted understanding inferences, a necessary core component to improving the Student's overall reading comprehension: "Given a REDACTED grade reading assignment, [the Student] will be able to

answer inferential questions about the text with REDACTED accuracy.” This goal was more specific and individualized for skill development rather than a goal related to a targeted raw score of an assessment tool,

Student met the June 5, 2019 reading comprehension benchmarks and annual goal by August 21, 2019. Thus, the accommodations and services in the June 5, 2019 IEP were appropriate to support Student achievement of the new IEP reading comprehension goal. A new reading comprehension annual goal and benchmarks were developed at the November 1, 2019 IEP meeting.

Student’s increased scores on the STAR reading assessment, between the May 2, 2019 and the November 22, 2019 administrations of the assessment show Student’s progress in reading skills while receiving special education services by REDACTED STATE AGENCY. Despite two different assessment instruments being administered, Student demonstrated progress.

Notwithstanding that Student demonstrated progress as measured by both the SRI and STAR assessments, the STAR assessment used by the REDACTED is a valid and reliable reading measure.

This Investigator researched comparative studies of the SRI Reading Assessment and the STAR Reading Assessment in preparation of the investigation of this Complaint. There was only one study (School Renaissance Institute (2000) Comparison of the STAR Reading Computer-Adaptive Test and the Scholastic Reading Inventory- Interactive Test Report) that compared only the two specific assessments described in the Complaint. As both tools are used throughout Delaware school systems, the Respondent noted sixteen of nineteen districts use the STAR Assessment. The following conclusions were cited by the authors:

... “Conclusions

The results of this evaluation show that the SRI test takes twice as long and is significantly less reliable than STAR. Students frequently obtained Lexile scores in the maximum range of 800 to 1500 – therefore, the test did not appear to have sufficient “top” to it for discerning the reading levels of upper-grade or higher-ability students. Students in the lower grades or of lower reading ability often had extreme difficulty answering SRI questions and they quickly became distracted or bored. Many students disliked the SRI test for the length of its reading passages, the similarity in meaning in its answer choice words, and the seemingly unending nature of the test as a whole.

In conclusion, the STAR test is superior in all measurable respects important to teachers and students.”

Moreover, the services, aids and modifications related to reading comprehension improved while Student was in REDACTED STATE AGENCY custody. First, specialized instruction described in the June 5, 2019 IEP that provided for 50 minutes per week (10 minutes daily) was more time than the specialized instruction time provided by REDACTED LEA SCHOOL in the previous October 30, 2018 IEP. Second, Student attended a 50-minute RTI class daily that provided targeted instruction in Reading and/or Math skills, including vocabulary and reading comprehension, while in the custody of REDACTED STATE AGENCY.

Finally, Mother's procedural rights were not violated when Mother participated in IEP meetings during the specific timelines of this Complaint and was in agreement with program plan as developed and documented by Mother's signatures on June 5, 2019 PWN and November 1, 2019 PWN via email.

This Investigator finds the instruction provided to Student by REDACTED STATE AGENCY during the relevant timeframe was specially designed based on REDACTED STATE AGENCY review of historical documents, as well as its own assessments and was individualized to meet Student's unique needs. Additionally, the instruction provided significant learning and conferred meaningful benefit on Student as shown by measured improvements. As such, REDACTED STATE AGENCY did provide Student with a FAPE during the relevant timeframe.

Notwithstanding my finding that there was no violation of FAPE, in the future it would be good practice for the Education Unit to amend the IEP in a timely manner once goals are reached. In this case, Student met the June 5, 2019 IEP annual goal in reading comprehension on August 21, 2019. Student demonstrated continued progress between August 21, 2019 and the November 1, 2019 IEP meeting, at which time a new annual goal in reading comprehension was created. This is not a violation of law because maximization of a child's education goes beyond what is required under the IDEA which requires only an adequate rather than an optimal IEP. *Bd. of Educ. of Christina Sch. Dist. v. R.F.*, 2003 WL 22476190, at *8 (Del. Fam. Ct. Aug. 28, 2003). Furthermore, the accommodations were placed under Unique Characteristics and Needs. Technically, accommodations should be placed within Services, Aids, and Modifications. This is a procedural error and did not lead to a denial of a FAPE (*See Coale v. State Department of Education*, 162 F.Supp.2d 316 (D.Del.2001)).

For these reasons, this Investigator finds no violation of the IDEA or corresponding state and federal regulations.

CORRECTIVE ACTION

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

By: REDACTED
Assigned Investigator