

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC #22-03

DATE ISSUED: DECEMBER 13, 2021

On October 14, 2021, REDACTED (Parent), filed a complaint with the Delaware Department of Education (Department) alleging REDACTED Charter School (Charter School) on behalf of REDACTED , REDACTED (Student), in accordance with the Individuals with Disabilities Act (IDEA) and 14 DE Admin Code §§923.51.0 through 53.0 and federal regulations 34 C.F.R. §§300.151 through 153.

The investigation included a review of Student’s educational records presented as part of this State Complaint provided by Parent and Charter School; interviews with Parent, Parent Information Center Inc. Family Specialist (PIC Family Specialist) Charter School Executive Director (Executive Director), Charter School Dean of Special Services/Case Manager (Dean of Special Services/Case Manager), Charter School Social Worker (Social Worker), and Charter School Dean (School Dean).

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.

COMPLAINT ALLEGATIONS

The Complaint alleges that Charter School violated Part B of the IDEA and corresponding state and federal regulations as follows:

- (1) Charter school suspended Student twice. One suspension was for not wearing a mask. The second suspension was due to a behavior incident that involved school staff.
- (2) In a September 17, 2021 meeting, Parent told the School Dean and the Dean of Special Services/Case Manager that Student might be exhibiting behaviors related to autism and requested an autism evaluation. The complaint further alleges Parent was told by the School Dean and the Dean of Special Services/Case Manager that Charter School could not perform the evaluation and Parent should look for out-of-school options.

FINDING OF FACTS

Background

1. Student is currently a REDACTED student at Charter School and receives special education services as a student with an educational classification of Autism (14 DE Admin. Code § 925.6.6).
2. Student was first identified as a student with a Developmental Delay in 2019 by the REDACTED School District (District). However, the Evaluation Summary Report (ESR), dated April 17, 2019 indicates, “the team discussed concerns regarding characteristics of autism, however, the team agreed not to pursue a determination of autism classification based on Student’s progress as well as to honor parent request.”
3. On February 20, 2020, a bilingual Speech and Language Pathologist within the District conducted an autism observation. The conclusion of the report stated, “today’s observation indicates that (Student) shows a variety of features typical of children with ASD.”
4. On March 30, 2021, Parent completed registration form so Student could attend Charter School during the 2021-2022 school year. The registration form was presented in English and contained the following question, “Does your child have any special needs...504, IEP Plan?” Parent marked “No.”
5. On May 25, 2021, an IEP revision meeting was held to add two educational goals. Student also qualified for Extended Year Services due to degree of impairment and placement was changed from an A setting to a B setting.
6. In September 2021, Student began attending Charter School and continued to receive special education services as a student with a Developmental Delay.

Complaint Claim # 1- Suspensions

7. On September 7, 2021, the first day of school according to a Communication Log provided by the Charter School, the Dean of Special Education/Case Manager called Parent to introduce self as Student’s Case Manager. Parent also confirmed Student was a bus rider; however, Parent would transport from time to time. Dean of Special Education/Case Manager told Parent persistent unsafe behavior may result in need for pick up. A follow-up email was sent to Parent requesting a copy of Student’s IEP.
8. Also on September 7, 2021, an additional entry in the Communication Log indicated that the Dean of Special Education/Case Manager called the Parent a second time concerning “unsafe behavior in classroom resulting in student removal.”
9. On the same day, a follow-up meeting between Parent and Dean of Special Education/Case Manager occurred prior to dismissal. Dean of Special Education/Case Manager explained Student’s escalated behavior that resulted in Student being removed from the classroom. Parent

shared that Student's prior setting included 4-5 students and two staff. Parent also shared Student had difficulty with transitions.

10. Later on September, 7, 2021, Dean of Special Education /Case Manager called District to request information about Student because Student's special education records arrived at Charter school that day. Dean of Special Education/Case Manager was going to follow -up with School Dean on Behavior Supports and IEP that had just been received.

11. Beginning on September 8, 2021, several accommodations were put in place according to the Response to Complaint submitted by Executive Director which indicates, "...Charter School began providing the following accommodations:

- Charter School assigned additional adult support to the student (additional special education services by case manager and paraprofessional have been provided)
- An additional learning environment, apart from REDACTED classroom, has been created to support the learning and social emotional needs of the student
- Additional Special Education services provided by Case manager and paraprofessional have been provided
- Paraprofessionals/Special Education teacher support throughout the school day and also during transitions
- The student has been provided weekly OT and Speech therapy
- A reward system has been put in place to support the student in fulfilling expectations
- Other supports include a first and then chart, frequent reminders, student timer for breaks to start and stop an assignment, fidgets, frequent structured breaks, and other sensory stimulation strategies
- Modified individualized schedule
- Adult meets student upon daily arrival to prevent eloping
- Accommodations for dismissal, recess and lunch have also been made to help the student transition successfully: For example, the student's case manager takes REDACTED to recess every day and stays with REDACTED at all times. Since recess takes place for students in different parts of the campus, the student has recess every day on the playground (this ensures safety and socialization with grade level peers). The student has REDACTED lunch in a small and quiet environment with adult supervision. During dismissal REDACTED was taken to the bus first. Then, during dismissal, to avoid wait time in the classroom, REDACTED was taken to the bus last. REDACTED would wait with the paraprofessional in the Executive Director's office (an office space that REDACTED likes to be in) until the bus was ready to leave. When REDACTED picks REDACTED up, to avoid wait time in the cafeteria with the rest of the pick-up students, REDACTED waits in the Executive Director's office. At times, REDACTED also waits outside for REDACTED and walks around with the paraprofessional.
- Paraprofessional/Case manager provides support in the general education setting at all times
- Reduced amount of transitions
- Calm meditation music to help deescalate student
- Contacted Delaware Office of Statewide Autism Programs for consultation on September 21
- Reached out to various companies to obtain information about BCBA services"

12. There is no evidence of an IEP revision meeting held to add these accommodations and supports to the IEP nor a Prior Written Notice (PWN) documenting any revisions.
13. On September 8, 2021, Charter School requested Parent to pick up Student after a half day.
14. On September 9, 2021, Parent met with School Dean, Dean of Special Services/Case Manager, and Social Worker. Handwritten notes by School Dean are entitled "Re-Entry Meeting." However, the Executive Director, Dean of Special Education/Case Manager, and School Dean, reported no record of an event that would require a "re-entry meeting."
15. On September 13, 2021, Student refused to wear mask in class and after repeated requests, Student eloped from classroom.
16. Student was suspended for this behavior because it was a violation of student Code of Conduct. Student had an early dismissal for this violation.
17. On September 16, 2021, Student threw glue sticks and kicked teacher because Student wanted a specific item. This was considered a violation of the Student Code of Conduct and required removal from class for a half day.
18. School indicated that there were frequent phone and in-person contacts with the Parent to request information and to keep Parent updated on Student behavior and progress, specifically noting the interactions always included positive highlights, as well as challenges.

Complaint Claim #2 Autism Assessment

19. On September 17, 2021, a re-entry meeting was held following the September 16, 2021 suspension.
20. During the September 17, 2021 meeting, Parent shared that when Student attended District, Student's IEP team made a referral for an autism evaluation. However, due to the Covid-19 pandemic, the evaluation was not completed prior to Student exiting the program. Parent also shared REDACTED contacted Student's doctors at Nemours Children's Hospital (Nemours) to request an evaluation and was told it would be a two month wait.
21. According to School, when Parent asked if the School administered autism evaluations, Dean of School said, "We do not have a psychologist in house for evaluation, however, if a student needs this kind of evaluation, we contract these services."
22. Conversely, Parent reported that the Charter School said they "couldn't perform these evaluations and I should look for out-of-school options." Parent reported that the Dean of School said, "...if I wanted this evaluation, I had to do it on my own."
23. According to School, at the September 17th meeting and on many days thereafter, the Dean of Special Education/Case Manager "encouraged Parent ... to be patient since this was a new transition for the student. Student was new to REDACTED, new to school, new to dual immersion program, and new to transitioning to various classes throughout the school day."

24. On or about September 20, 2021, the Social Worker sent Parent a text message with the contact information so Parent could obtain an outside evaluation. The Social Worker and Parent had multiple contacts via text message regarding the progress toward obtaining an outside evaluation and finding providers to do such an evaluation.
25. In one text message, Parent explained that paperwork had been completed and the doctor's office was checking with Parent's insurance regarding payment for an evaluation. Parent shared a text message with the Social Worker that included an invoice indicating the evaluation would be \$1,200 and asking if the Parent wanted to move forward with an evaluation.
26. The Executive Director and Dean of Special Education/Case Manager indicated neither of them had been in communication with the Social Worker regarding the text messages. The Social Worker is a contracted position.
27. On September 30, 2021, Parent contacted Parent Information Center of Delaware, Inc. (PIC). On the same date, a PIC Family Specialist assisted Parent in completing a Request for Evaluation that was sent to the Charter School. Also, on September 30, 2021, the PIC Family Specialist called Dean of Special Education/Case Manager to speak about Student's case.
28. On September 30, 2021, the Charter School received the above-mentioned Request for Evaluation. Upon receipt, the Dean of Special Education/Case Manager contacted Parent to explain the Charter School would schedule a meeting within 10 days so the parent could sign the Permission to Evaluate Form and asked for Parent's availability.
29. On October 5, 2021, Dean of Special Education/Case Manager contacted Parent to arrange a meeting on October 7, 2021 and sent an invitation for the meeting to Parent, PIC Family Specialist, and other participants.
30. On October 7, 2021, a meeting was held with Parent, Dean of Special Education/Case Manager, Dean of School, Social Worker, Mental Health Support staff member from Charter School, Special Education Consultant for Charter School and PIC Family Specialist. Parent requested the Charter School evaluate the Student. Dean of Special Education/Case Manager gave Parent evaluation paperwork, including the Permission to Evaluate (PTEO form, and reviewed the paperwork and evaluation process after the meeting concluded.
31. During the October 7, 2021 meeting, the meeting to review the results of the evaluation was scheduled for November 3, 2021.
32. On October 11, 2021, the Dean of Special Education/Case Manager contacted Parent requesting the PTE be returned. Parent informed Dean of Special Education/Case Manager it would be sent the next day.
33. On October 12, 2021, Parent returned signed PTE to Charter School.

34. Also on October 12, 2021, the Dean of Special Education/Case Manager called Parent to confirm evaluation time.
35. The evaluation process began on October 13, 2021.
36. On October 14, 2021, the Parent filed State Complaint with the Department on behalf of the Student.
37. On October 15, 2021, the Dean of Special Education/Case Manager called the Parent to inform the Parent that the Occupational Therapy evaluation had commenced and would be continued on October 22, 2021. The Dean of Special Education/Case Manager also informed Parent that the Eligibility Meeting was scheduled for November 3, 2021 at 2:30 pm and the IEP meeting was scheduled to be held on November 5, 2021 at 11:30 am. An update of Student's day was also shared with the Parent.
38. On October 18, 2021, Dean of Special Education/Case Manager called to inform Parent two additional forms (Developmental Profile 3 for Parents/Guardians and Conner's Early Childhood – Parents Answer Booklet) were being sent home with Student to be completed and returned to school. An update on Student's day was also shared with Parent. An email followed with same information.
39. On October 21, 2021, Parent emailed the Dean of Special Education/Case Manager to request re-evaluation meeting scheduled for November 3, 2021 be changed from 2:30 pm to 2:00 pm.
40. On October 26, 2021, a new invitation was sent to meeting participants with the requested change of time.
41. On November 3, 2021, a re-evaluation meeting was held and the Student was determined to be eligible for special education services with an educational classification of Autism.
42. On November 5, 2021, an IEP meeting was held and a new IEP was developed by the IEP team. The prior written notice (PWN) was dated November 5, 2021 and included Part 1 Eligibility from November 3, 2021 and Part 2: IEP from November 5, 2021. The PWN that was provided referenced the older 2016 version of the Procedural Safeguards.
43. On December 6, 2021 Charter School explained to the Investigator that it uses a contracted service for translating documents. As of December 6, 2021, the Charter School was not in receipt of the IEP translation.

CONCLUSIONS

Complaint Claim #1: Suspensions

Student was removed from class twice for violations of the Code of Conduct. Phone logs dated after the child's removal show routine communications and contact with Parent. Notwithstanding this telephonic contact however, there was no written documentation of either incident.

Delaware regulations addressing discipline procedures allow school personnel to "remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities)..." 14 DE Admin. Code § 926.30.2. Once a student is removed for more than ten (10) school days additional protections apply. *See* 14 DE Admin. Code § 926-30. Since Student was only removed from class twice, the threshold for additional protections has not been met.

Additionally, Delaware regulations do not require written documentation and parent notification of a child's removal from class for code of conduct violations. However, given that the regulations regarding discipline procedures are predicated upon a violation of the code of student conduct, it would be considered best practice for a school to document in writing each violation of the code of student conduct that resulted in the removal of a child with documented special needs.

For these reasons, I find no violation of the IDEA, State law or corresponding regulations for removing Student from class twice without written documentation. However, best practice is to thoroughly document each time a child is removed from class as it would provide the team with the best information to determine whether to conduct a functional behavioral assessment and develop a behavioral intervention plan, and/or add accommodations to the student's IEP. Thorough written documentation would also help the team to identify patterns in behavior.

Complaint Claim #2: Autism Assessment

It is undisputed that on September 17, 2021, Parent told Charter School that Parent contacted Nemours to have an Autism evaluation completed for Student. Delaware regulation requires a school to conduct a re-evaluation of a student with a disability "if the child's parent ... requests a reevaluation." 14 DE Admin. Code § 925.3.1. Parent claims she asked the Charter School to conduct the evaluation at that time, while Charter School claims they said they would contract outside assistance to conduct an autism assessment if a child needed one. The facts are disputed whether Parent specifically "requested" the Charter School conduct a re-evaluation. The question thus arises whether Parent telling Charter School about contacting Nemours to request an Autism assessment rises to the level of a "request" of a re-evaluation, thereby triggering the requirement for the Charter School to conduct the re-evaluation. It would strain credulity to believe that Parent, having been told by Nemours that the Autism evaluation would not take place for at least two months, and later communicating to Charter School that the assessment would cost \$1,200, was not in fact, implicitly requesting the Charter School to conduct a re-evaluation with an Autism

assessment. Accordingly, I find that Parent requested a re-evaluation and Charter School failed to provide one until the PIC Family Specialist got involved nearly two weeks later.

Once a parent requests a re-evaluation, Charter School has two options. Charter School may conduct the evaluation. *See*, 14 DE Admin. Code § 925.3.0. Or, Charter School may issue a PWN refusing to conduct the evaluation. *See*, 14 DE Admin. Code § 926.3.1.2. Charter School's failure to do either option is a procedural violation of Delaware regulations.

A procedural violation of the IDEA will not rise to the level of a denial of FAPE unless there is Substantive harm. *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 66-67 (3d Cir. 2010). Substantive harm may be found when the procedural violation results in a "loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits." *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012) Charter School's procedural violation in this case did not result in a loss of educational opportunity, deprivation to the parent of their participation rights or a deprivation of the Student's educational benefits because the Parent, PIC and the Charter School worked together to remedy the failure and have the Student re-evaluated within 2 weeks of the initial request. Therefore, I find the Charter School did not deny Student a FAPE.

Although not required, best practice would have been for Charter School to have reviewed the IEP and provided supports and accommodations based on the Student's needs, regardless of classification, especially given the behavioral concerns arising from Student's removals from class. The IEP should address the Student's needs and not be dependent on the re-evaluation, even though the re-evaluation may have brought to light additional needs and/or clarified them.

Prior Written Notice

a. Accommodations

On September 8, 2021, Charter School implemented a number of accommodations for Student including changes in in the level of staff support for Student and access to an additional separate learning environment. Delaware regulations require local education agencies (LEAs) to send a PWN when the school proposes a change to the provision of FAPE. *See* 14 DE Admin. Code § 926.3.1.1. Charter School did not send Parent a PWN about implementing the additional accommodations as required by regulation. As such, Charter School committed a procedural violation of Delaware regulations. Because Parent and Charter School engaged in numerous communications and the accommodations resulted in additional educational opportunity in this case, **Charter School's procedural error did not result in a denial of FAPE.**

b. Notifications

1. Charter School provided Parent with a PWN dated November 5, 2021 which included an eligibility meeting that occurred on November 3, 2021. Charter School should have provided a separate PWN to Parent for the November 3rd eligibility determination and the November 5th IEP. Collapsing those two events into one PWN failed to give Parent the full 10 days' notice required by the regulations to employ their procedural safeguards. 14

DE Admin. Code 926.3.1. This is a technical procedural violation, however, in this case, the Parent was not deprived of their participation rights because Parent was able to exercise their procedural safeguards within the allotted time. Nor, was there a loss of educational opportunity for the student or a deprivation of educational benefits. *See, D.K* at 696 F.3d 249. Therefore, **Charter School’s procedural error did not result in a denial of FAPE.**

2. Procedural Safeguards are designed to provide Parents of children with disabilities important information about their rights and dispute resolution, therefore schools should always provide Parents with the latest version. Charter School provided to Parent a PWN which referenced a 2016 version of the Procedural Safeguards during the eligibility and IEP meetings. Charter School should have provided Parent with the updated PWN document that references the 2019 Procedural Safeguards. In this case, there is no evidence that Parent was deprived of their procedural rights or that Student lost educational opportunity or benefits therefore, **Charter School’s failure to utilize the most current version of the PWN document that references the 2019 Procedural Safeguards did not result in a denial of FAPE.**

c. Translation Services

1. The written translation of time-sensitive documents, (Student’s Evaluation and IEP) in this case took 3-4 weeks before Parent received documents in their first language. While not a violation of state regulations, the delay is unacceptable, especially in a language immersion Charter School setting.
2. Charter School provided Procedural Safeguards to Parent in English. Parent is a native Spanish speaker. Delaware regulations require PWNs to be in “understandable language” and “provided in the native language of the parent ... unless it is clearly not feasible to do so.” 14 DE Admin. Code § 926.3.3. Charter School provided no evidence that it was not feasible to provide the PWN to Parent in Spanish, therefore failing to do was a procedural violation of State regulations. There was no “loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits.” *D.K* at 696 F.3d 249. **The Charter School’s failure to provide Procedural Safeguards in Parent’s Native language did not result in a denial of FAPE.**

CORRECTIVE ACTION

To address the regulatory violations noted in this Decision, the Department directs the Charter School to take the following corrective actions:

Student Level Correction Actions

1. On or before **January 10, 2022**, the Charter School shall convene an IEP Team meeting to:
 - a. Review and revise Student's IEP as needed to ensure the IEP documents any and all accommodations and supports that the student needs.
 - b. Discuss and determine if additional supports are needed to address the Student's behavior, as well as to review and revise as needed the functional behavior assessment and behavior intervention plan.

A copy of the IEP, functional behavior assessment, behavior support plan, and prior written notice that contains all of these elements shall be provided to the Department's Director of Exceptional Children Resources Work Group on or before **January 14, 2022**.

School Level Corrective Action

1. **On or before February 1, 2022**, the Charter School shall review the regulations related to re-evaluation, prior written notice, accommodations, providing information in the parents' native language, and removal of a child from class for discipline. The Charter School shall provide professional development to all staff and contracted staff who work for the Charter School including special education teachers, administrators, and social workers. The related documentation (sign in sheet, agenda, copy of handouts and/or PowerPoint, etc.) shall be provided to the Department's Director of Exceptional Children Resource Workgroup **on or before February 1, 2022**.

Submitted by:

REDACTED

Assigned State Investigator