

DELAWARE DEPARTMENT OF EDUCATION

**ADMINISTRATIVE COMPLAINT
LETTER OF FINDINGS**

DE AC-17-04 (October 11, 2016)

On August 12, 2016, Parent filed a complaint with the Delaware Department of Education (“Department”) on behalf of Student.¹ The complaint alleges that “School” violated Part B of the Individuals with Disabilities Education Act (“IDEA”) and implementing state and federal regulations concerning the provision of a free, appropriate public education to Student (“FAPE”).

The Department’s investigation is limited to claims alleging a violation of Part B of the IDEA and implementing state and federal regulations. The complaint has been investigated in the manner 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 and on-site interviews with the Principal. Interviews by phone and email were also conducted with Parent, Aunt, Principal, School Counselor, 2015-2016 Special Education Teacher, 2015-2016 Special Education Paraprofessional, and 2016-2017 Special Education Teacher/Case Manager.

FINDINGS OF FACT

1. Student is x years of age and attended the x grade at School during the 2015-2016 school year.
2. Student attended X Charter School the 2014-2015 school year and had an Individualized Education Program (“IEP”). When Student transferred to the School, he/she was identified as a student with a primary special education classification of Autism and a secondary classification of Other Health Impairment (“OHI”) due to a diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”).
3. In Delaware, when a child with a disability transfers from one school to another, the receiving school must temporarily place the child in an educational setting which appears to be most suited to the child’s needs based on mutual agreement of the parents and the receiving school. The agreement must be documented by the parent and the receiving school through signatures on a temporary placement form or the cover page of the IEP. Then, within 60 days of the child’s initial attendance in the receiving school, the school

¹The Final Report identifies some people and places generically, 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 Final Report is released as a public record.

must either: (a) adopt the child's IEP from the previous school at an IEP meeting, or develop, adopt, and implement a new IEP. *See*, 34. C.F.R. § 300.323; 14 DE Admin Code § 925.23.4.1.

4. In this case, there is no evidence the School followed this process. Parent reports he/she provided the School a copy of Student's IEP from Charter School at the beginning of the school year. Student's special education file at the School did not contain a signed, finalized copy of Student's IEP from Charter School nor temporary placement paperwork. This IEP was to be in effect until November 12, 2015 with goals for writing and social skills.
5. IEP progress notation on November 12, 2015 indicated that Student mastered written expression and social skills goals.
6. In Delaware, a reevaluation shall occur at least once every three years, unless the parent and public agency agree that a reevaluation is unnecessary. *See*, 34. C.F.R. § 300.303(b)(2); 14 DE Admin Code § 925.3.2. Student's last evaluation occurred on September 5, 2012. The School did not complete a triennial reevaluation until October 22, 2015.
7. On October 15, 2015, the School completed a psychoeducational evaluation of Student. The evaluation included academic achievement, clinical interviews, and a review of Student's prior records. Student's prior records included an evaluation from X Charter School dated September 5, 2012 addressing Student's academic and cognitive levels, as well as adaptive behavior raters dated March 27, 2015 and April 12, 2015 from Doctor. Student's prior records noted a history of autism spectrum disorder, attention deficit hyperactivity disorder, trichotillomania, and psychiatric care at Hospital.
8. The School did not complete updated behavior raters as part of Student's October 15, 2015 psychoeducational evaluation to assess current levels of functioning.
9. On October 22, 2015, the IEP team convened to conduct Student's three year reevaluation to determine continued eligibility for special education and related services. The IEP team considered the October 15, 2015 psychoeducational evaluation report, as well as teacher observations, and comments from Parent. The School Psychologist found the Student's reading skills to be at grade level, but Student's math skills were below grade level. Additional weaknesses were noted in written expression and social skills. One of Student's teachers from a previous school attended the meeting and described Student as cooperative and an avid reader. This previous teacher also noted Student had trouble beginning tasks, frequently procrastinated when completing projects, avoided difficult assignments, and demonstrated poor social skills as a result of mood swings and being easily annoyed by peers. Parent reported to the IEP team that Student had previously been diagnosed with Attention Deficit Hyperactivity Disorder, and had received special education services under the OHI classification through x grade.

10. At the October 22, 2015 meeting, the IEP team determined that Student continued to meet the eligibility criteria for an educational classification of Autism as outlined in 14 DE Admin Code § 925.6.6. The IEP team's eligibility determination was documented in an Evaluation Summary Report, however, it did not include the IEP team's discussion of the eligibility determination (Section C: Eligibility Determination) as specifically required by 14 DE Admin Code § 925.6.1. Thus, there was no information provided as to why the secondary classification of Other Health Impaired was not maintained as part of Student's eligibility for special education.
11. Parent alleges the School failed to ensure the School Psychologist attended the October 22, 2015 eligibility meeting to discuss the results of the psychoeducational evaluation to the IEP team. Records show the school psychologist signed the Evaluation Summary Report for the October 22, 2015 meeting. However, neither the Principal nor Special Education Teacher reported remembering the School Psychologist being present at the October 22, 2015 meeting. They indicated that the School Psychologist may have communicated results to Parent by telephone and School Psychologist attended later meetings with Parent.
12. On November 12, 2015, the IEP team convened to develop Student's IEP. The meeting participants included Parent, Student, Aunt, Principal, Special Education Teacher, Science/Spanish Teacher, and Language Arts Teacher.
13. No educational concerns of the Parent were listed. No other educational needs resulting from the child's disability (Autism) were given. No related services were listed.
14. Student's November 12, 2015 IEP contained a reading goal. The annual reading goal states "Given grade level text, (Student) will understand printed text through story elements and/or text features and structure with 70% accuracy as measured by summative reading and/or holistic assessments." Special Education Teacher noted that Student showed weakness in reading, although the psychoeducational evaluation documented average reading performance in word recognition, reading comprehension, pseudoword decoding, and oral reading fluency. Special Education Teacher said social skills were addressed with Student by speaking to him/her and discussing what to do in various situations. Paraprofessional also attempted to work on organizational skills by asking Student for assignments and reminding Student of work.
15. Parent signed the IEP. However, Parent did not check "Yes" to agree to the following: acknowledgement of the receipt of Procedural Safeguards, agreement with program described, and agreement with the placement decision.
16. Student's file contains another IEP also dated as having been written on November 12, 2015. This IEP was not put into effect until April 26, 2016.
17. In the complaint, Parent alleges this second November 12, 2015 IEP was never signed and approved and remained in draft form until April 26, 2016.

18. The second November 12, 2015 IEP had numerous incomplete provisions, and handwritten notations throughout the document requiring additional information to be completed. In addition, Student's special education file at the School lacked the organization necessary to properly maintain Student's educational records. The School also failed to provide prior written notice to Parent proposing the IEP that was outlined in the November 12, 2015 IEP meeting.
19. The School provided one report on Student's progress toward meeting his/her IEP reading goal under the first November 12, 2015 IEP (i.e. December 17, 2015 sufficient progress to meet annual reading goal).
20. In February 2016, a two hour meeting was held at Parent's request to discuss Student's program and progress on IEP goals. Parent attended the meeting, as well as Student's Advocate, Special Education Teacher, two General Education Teachers, and the Principal. Parent claims the Principal attended for only 20 minutes of the two hour meeting. Student's Advocate made suggestions for IEP goal revisions, which Special Education Teacher said were "not clear." Parent requested the School provide data to show Student's progress on IEP goals. When told no data existed, Parent requested that data be collected for review. Special Education Teacher said data would be collected. No records of the February 2016 meeting were contained in Student's special education file. Principal and Special Education Teacher believe that this may have been a parent conference, rather than an IEP meeting since the February 2016 calendar contained a parent conference day.
21. A March 3, 2016 progress notation indicated that Student was showing sufficient progress in reading to meet annual goal.
22. On March 11, 2016 an IEP team meeting was held at Parent's request because Student was failing classes. Parent requested a Functional Behavioral Assessment ("FBA") be conducted. No notice of meeting was located in Student's special education records. Parents must be notified in writing, no less than ten school days prior to the IEP Team meeting (unless mutually agreed otherwise) to ensure that they will have an opportunity to attend. 14 DE Admin Code § 925.22.1.1.
23. The IEP team members who signed the first page of the IEP on March 11, 2016 consisted of Parent, Aunt, Principal, Language Arts Teacher, Special Education Teacher, and Student's Advocate. Student was not listed as an attendee. According to the IEP meeting minutes (labeled "Conference Summary"), the IEP team agreed to revise Student's IEP and add goals for social skills, math, and writing, and to remove Student's reading goal. The IEP meeting minutes also reflect the team's agreement that an FBA and possible Behavior Support Plan would be provided for Student. The minutes state the plan to incorporate "chunking" as an accommodation for Student. The minutes further state Student's IEP would be revised to add courses of study for the x and x grades, and the team would decide whether Student would be enrolled in the 12-month program.

24. On March 11, 2016 School provided prior written notice to Parent. The notice describes the proposal to provide a Functional Behavioral Assessment for Student, but fails to address the other proposed revisions to Student's IEP as discussed and documented in the IEP meeting minutes.
25. Checklists regarding Student's behavior were completed by staff on March 15 and 16, April 27, and May 9, 2016. Parent completed a behavior checklist on May 10, 2016. However, there is no evidence the School ever analyzed any of the information collected for a Functional Behavioral Assessment (FBA) for Student, or developed a behavior support plan. Special Education Teacher stated that School Psychologist reviewed findings and observed Student and said there was no need for a behavior support plan. No documentation of this finding is contained in Student's records. School failed to provide evaluation findings to Parent.
26. On April 26, 2016, an IEP meeting was held to review Student's IEP and revise goals. An IEP was produced on that date which was dated as November 11, 2015. Student's IEP contained goals for writing, social skills, numerical operations and problem solving, and organizational skills. However, the goals failed to define in measurable terms how Student's progress would be measured over time. For example,
- (a) For the writing goal, the present level of performance was based on achievement test scores, and focused on Student being given a target word for which to organize ideas, express complete thoughts, and develop complete sentences. Services were to be provided 3 times per week for 30 minutes, but the IEP failed to specify the location of the services.
 - (b) The social skills goal focused on Student increasing his/her ability to function appropriately in the school environment by showing appropriate social interaction and completing assignments in class. Services were to be provided 3 times "per times" for 30 minute sessions in the general education setting.
 - (c) For the math goal, the present level of performance was based on achievement test scores, and focused on Student increasing math performance from x grade, x months to current grade level as measured by math level indicator. Services were to be provided 2 times per week for 30 minutes, but no location was specified.
 - (d) The organizational skills goal focused on Student improving organization skills for classroom work and homework independently. Services were to be provided 3 times per week for 10 minutes in the general education setting. But, the benchmarks were not consistent in measuring progress, and required Student to use a personal daily checklist of assignments 70% of the time for one quarter, then a binder/notebook with labeled sections for each subject for the next quarter, and a homework folder with pocket dividers inserted in main binder/notebook for the next quarter.

27. The April 26, 2016 (November 12, 2015) IEP noted Parent was concerned with Student being able to complete assignments and get better grades in all classes. The IEP did not identify Student as having specific communication needs or behavior needs requiring positive behavior interventions, supports, and/or services.
28. For transition services, the April 26, 2016 (November 12, 2015) IEP described Student's postsecondary goals as obtaining a job in area of work after graduating from high school and attending a college to receive training in area of work. However, the courses of study described for Student only addressed courses for the x grade, and failed to include courses through Student's expected year of graduation to assist Student in meeting his/her postsecondary goals.
29. The April 26, 2016 (November 12, 2015) IEP identified counseling as a related service for Student to be provided one time per week for 30 minutes. The IEP team determined Student would take the statewide assessment without accommodations, and adhere to the school code of conduct. The IEP team noted that Student was eligible for participation in a 12-month program under 14 Del. C. §1703 due to being classified as a student with Autism. The Special Education Teacher indicated that Parent opted not to send Student to 12-month program. The IEP team also noted Student was not eligible for reading-based extended school year services or federal extended school year services. The IEP team determined Student's educational placement would continue in the "A" setting, meaning Student receives instruction in the regular classroom greater than or equal to 80% of the day.
30. The School failed to provide prior written notice to Parent proposing the revisions to Student's IEP as discussed at the April 26, 2016 IEP meeting. Prior written notice is required to be given to the parents of a child with a disability no less than ten school days before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. *See*, 34. C.F.R. § 303.421; 14 DE Admin Code § 926.3.1.
31. On or about June 20, 2016, the School provided an IEP progress report to Parent for what was labeled "Date range of 11/12/15 to 11/11/16." However, the progress report was based only on subjective observations, and stated in generalized, conclusory terms with no data to support the descriptions. The report stated:
 - (a) In math, Student had mastered addition and subtraction of decimals and multiplication and division of simple fractions. "Sufficient progress" was made to meet Student's annual goals in multiplication and division of decimals and addition and subtraction of simple fractions. However, no benchmark numbers or data were provided.
 - (b) In language arts, Student's progress was generally described as "sufficient."

- (c) For organizational skills, Student's progress was described as "not sufficient" to meet annual goals. The measure to assess Student's progress was not consistent as marking period 1 measured Student's use of a checklist, marking period 2 referred to a binder, and marking period 3 referred to a folder.
 - (d) Another description of progress described as "functional life skills" noted Student's progress as "sufficient" for showing appropriate social interaction and completing assignments in class and transition from tasks, but "not sufficient" progress in participating in tasks/activities by exhibiting appropriate behavior, following classroom rules/directions, and asking to take break. Yet, functional life skills was not listed as an IEP goal in Student's IEP.
32. Parent alleges Student was bullied at School when an item was pulled from his/her head. The Dean of Students investigated and handled the incident and spoke with Parent. Special Education Paraprofessional monitored Student during transition times. The School Counselor confirmed Student received counseling as a related service. Counseling addressed Student's concerns, which were academic needs, with open dialogue for any other needs to be discussed. Student also met with a mentor for 30 minutes per week for support.
33. Parent alleges the School permitted Student's Special Education Teacher to provide Student with instruction in high school math when the teacher lacked certification in secondary level math to do so.

CONCLUSIONS

A. When IEPs Must Be In Effect

As mentioned above, when a child with an IEP in Delaware transfers from one school to another, the receiving school must temporarily place the child in an educational setting which appears to be most suited to the child's needs based on mutual agreement of the parents and the receiving school. The agreement must be documented by the parent and the receiving school through signatures on a temporary placement form or the cover page of the IEP. Then, within 60 days of the child's initial attendance in the receiving school, the school must either: (a) adopt the child's IEP from the previous school at an IEP meeting, or develop, adopt, and implement a new IEP. *See*, 34. C.F.R. § 300.323; 14 DE Admin Code §925.23.4.1.

In this case, Student attended x Charter School during the 2014-2015 school year, and had an IEP. Student then transferred to School in 2015-2016 with an IEP. However, the records do not establish that School followed the transfer process outlined in the regulations. Student's special education file at School did not contain a signed, finalized copy of Student's IEP from x Charter School. Parent reports providing a copy of Student's IEP from x Charter School to School. Yet, there is no documentation to reflect the specific special education and related services Student received at the start of the 2015-2016 school year based on his/her status as an incoming student with an IEP. **As a result, I find a violation of Part B of the IDEA and corresponding State regulations regarding students with disabilities who transfer from one Delaware public school to another with an IEP.**

B. Attendance of School Psychologist at Reevaluation Meeting

Public agencies are responsible for ensuring the IEP team for each child with a disability includes an individual who can interpret the instructional implications of evaluation results, and at the discretion of the school or parent, other individuals who have knowledge or special expertise regarding the child. *See*, 34. C.F.R. § 300.321(a)(5) and (6); 14 DE Admin Code §925.21.1.5 and 21.1.6.

In this case, Parent alleges School failed to ensure the School Psychologist attended the October 22, 2015 meeting to determine Student's educational needs and continued eligibility for special education and related services. The School Psychologist completed a psychoeducational evaluation, and it was reviewed and considered by the IEP team at the October 22, 2015 meeting. Parent claims the School Psychologist was not present. Records from the School show the School Psychologist signed in as a participant on the attendance log for the October 22, 2015 meeting. However, neither Principal nor Special Education Teacher remembers School Psychologist being present at the October 22, 2015 meeting. They indicate that School Psychologist may have communicated results to Parent by telephone and attended later meetings with Parent. **As a result, I find a violation of Part B of the IDEA and corresponding State regulations regarding the attendance of the School Psychologist at the October 22, 2015 reevaluation meeting for Student.**

C. Evaluation Summary Report

State and federal regulations require all local education agencies to document a student's determination of eligibility through an evaluation summary report. *See*, 34. C.F.R. § 300.306; 14 DE Admin Code §925.6.1. In this case, the October 22, 2015 evaluation summary report did not document the IEP team's discussion of the eligibility determination as specifically required by Delaware regulations. **As a result, I find a violation of State regulations regarding documentation of the IEP team's discussion of the eligibility determination.**

D. Prior Written Notice

State and federal regulations require local education agencies (LEAs) to provide written notice to the parents of a student with a disability no less than 10 school days before the local education agency proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the student. The notice must contain several provisions, including, but not limited to, a written description of the proposed or refused action, a written explanation of why the action is proposed or refused, and a written description of other options the IEP team considered, and why those options were rejected. *See*, 34. C.F.R.§ 300.503. In this case, School failed to adequately provide prior written notice proposing Student's IEP and IEP revisions that were outlined at the various IEP meetings held for Student as described herein. **As a result, I find a violation of Part B of the IDEA and corresponding State regulations regarding the provision of prior written notice.**

E. Periodic Reports on Student's Progress

State and federal regulations require LEAs to ensure a student's IEP contains a description of how the student's progress toward meeting annual IEP goals will be measured and when periodic reports will be provided. *See*, 34. C.F.R.§ 300.320(a)(3); 14 DE Admin Code §925.20.1.3. In this case, School failed to adequately measure Student's progress and provide reports on progress. **For the reasons stated, I find a violation of Part B of the IDEA and corresponding State regulations regarding measuring and reporting student progress on meeting annual IEP goals.**

F. Parent Participation at IEP Team Meetings

State and federal regulations require LEAs to ensure parents are afforded an opportunity to participate in IEP team meetings related to the identification, evaluation, and educational placement of the student, and the provision of FAPE to the student. Parents are entitled to certain procedural safeguards, including the provision of written notice no less than 10 school days prior to an IEP team meeting concerning their child. The notice must further include specific provisions, including the purpose, time, and location of the meeting, and who will be in attendance. *See*, 34 C.F.R. § 300.322(a); 14 DE Admin Code § 925.22.0.

In this case, an IEP meeting was conducted on March 11, 2016 that failed to properly notice the meeting. As a result, Parent was denied his/her procedural safeguards. **For the reasons stated, I do find a violation of Part B of the IDEA and corresponding State regulations regarding the provision of written notice to parents prior to an IEP team meeting.**

G. Provision of FAPE to Student

The IDEA and corresponding Delaware law require public agencies to provide a free appropriate public education 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. Title 14, Chapter 31 of the Delaware Code defines "FAPE" 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 Department of Education 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 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's potential.

See, 14 Del. C. § 3101(5).

The U.S. Supreme Court has further found an IEP must confer educational benefit to a child. The IDEA requires a child with a disability to receive “access to specialized instruction and related services which are individually designed to provide educational benefit” to the child. *Board of Education of Hendrick Hudson Board of Education v. Rowley*, 455 U.S. 176, 102 S. Ct. 3034 (1982). Moreover, the IEP is the central vehicle for the collaborative process between parents and the school, and is the primary mechanism for the delivery of FAPE. *Ridley School District v. M.R. and J.R.*, 680 F.3d 260 (3d Cir. 2012).

In this case, Student failed to receive FAPE through an appropriate IEP for the 2015-2016 school year at School. As discussed herein, Parent provided to School a copy of Student's prior IEP from x Charter School at the beginning of the year. Yet, Student's special education file at School did not contain a signed, finalized copy of Student's IEP from x Charter School. In fact, there is no written record of the special education and related services Student received at School at the start of the 2015-2016 school year.

Student's IEP, developed at the November 12, 2015 IEP meeting remained incomplete and in draft form until April 2016. The November 12, 2015 IEP had numerous incomplete provisions, and Student's special education file lacked the organization necessary to appropriately maintain Student's educational records. Student's proposed IEP did not provide appropriate services and supports based on Student's identified areas of educational need. The IEP goals were not measurable, and overly generalized in description. School failed to adequately measure Student's progress on IEP goals, and report on Student's progress as required. When the progress report was provided at the end of the school year, the descriptions were overly generalized, and relied on subjective observations, rather than data collected. Progress monitoring is a scientifically based practice used to assess academic progress and evaluate the effectiveness of instruction. The lack of progress monitoring in this case impeded Parent's ability to participate in decision making regarding the provision of FAPE to Student. In addition to the several procedural violations of the IDEA as stated herein, School further failed to conduct a functional behavioral assessment of Student's behavior as determined necessary by Student's IEP team on March 11, 2016. **As a result, I find a violation of Part B of the IDEA and corresponding Delaware law regarding the provision of FAPE to Student for the 2015-2016 school year.**

H. Teaching Certification

Parent alleges School permitted Student's special education teacher to provide Student with instruction in high school math when the teacher lacked the certification to teach secondary level math under Delaware regulations. Parent's allegation related to teacher certification is not a claim that falls under Part B of the IDEA and corresponding state and federal regulations, and is therefore not addressed in this complaint decision. The scope of this complaint decision is limited to addressing violations of Part B of the IDEA and implementing state and federal regulations. *See*, 34 C.F.R. § 300.153(b)(1); 14 DE Admin Code § 923.53.2.1.

I. Bullying

Parent alleges Student was bullied at School and when Parent requested the Principal to call him/her regarding the incident, the Principal had the Dean of Students call instead. A paraprofessional monitored Student during transition times. Student also received counseling services and met with a mentor for 30 minutes per week.

The U.S. Department of Education's Office of Special Education and Rehabilitative Services issued a Dear Colleague letter on August 20, 2013 which addresses bullying (*attached*). The letter states, "...bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA that must be remedied. However, even when situations do not rise to a level that constitutes a denial of FAPE, bullying can undermine a student's ability to achieve his or her full academic potential."

The Dear Colleague letter further states, "Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his/her IEP. The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's individual needs; and revise the IEP accordingly." States and school districts are also encouraged in the letter to reevaluate their policies and practices addressing bullying.

CORRECTIVE ACTIONS

The Department is required to ensure that corrective actions are taken when violations of federal or state regulations are identified through the complaint investigation process. *See* 14 DE Admin. Code § 923.51.3.2. In this case, the following corrective actions are to be taken:

1. In this complaint in which a failure to provide FAPE was found, the State Department of Education, pursuant to its general supervisory authority under Part B, must address “how to remediate the denial of those services including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child” [34 CFR §300.660(b)(1)]. This investigation resulted in the finding of the denial of FAPE for the entire school year, for which compensatory educational services may be awarded. An award of compensatory education is an equitable remedy *See, Reid v. District of Columbia*, 401 F.3d 516, 523 – 524, 43 IDELR 32 (D.C. Cir. 2005) that “should aim to place disabled children in the same position they would have occupied but for the school district’s violation of the IDEA.” *Reid*, 401 F.3d at 518. “[C]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court [and/or hearing officer] to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE to a student.” *Reid*, 401 F.3d at 523 citing *G. ex rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295, 309, 40 IDELR 4 (4th Cir. 2003). Courts have indicated that compensatory awards should compensate, meaning that they should provide more than what is required under an IEP. *See, Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 525 (C.A.D.C. 2005).

Due to the denial of FAPE throughout the entirety of the 2015-2016 school year, compensatory education must be provided to Student by School. School will calculate and submit the number of hours owed to Student, as well as a description of how the number of hours were calculated. School will submit a plan for delivering the compensatory education, including a timeline for service delivery and how the services will be provided (e.g. tutoring, during the summer, reimbursing parents for outside tutoring). This plan must be submitted to Director of the Exceptional Children’s Resources on or before **November 4, 2016**.

2. The School will hold an IEP team meeting/s to:
 - a. Complete the actions necessary to fully develop the Evaluation Summary Report and determine eligibility. This includes documenting the IEP team’s discussion of the eligibility determination.
 - b. Conduct the previously agreed upon Functional Behavior Assessment (and develop a Behavior Support Plan, if needed). School will also obtain permission to evaluate to conduct the Functional Behavior Assessment, as well as to assess Student’s social skills. School will schedule an IEP team meeting to discuss findings from these evaluations and will revise Student’s IEP to reflect current

needs. *See* 14 DE Admin. Code § 923.51 (addressing remedying “appropriate future provisions of services for all children with disabilities”).

- c. Revise the IEP to ensure appropriate and compliant present levels of performance, goals, and benchmarks
- d. Revise the IEP to ensure appropriate and compliant frequency, duration, and location of services
- e. Discuss and determine whether the bullying resulted in a denial of FAPE, as well as identify and address any supports and/or accommodations that are necessary for Student by revising the IEP.

The School shall perform these corrective actions and provide copies of the permission to evaluate, social skills evaluation, Functional Behavior Assessment (Behavior Support Plan if the IEP team determines one is necessary), Evaluation Summary Report, Notice of Meeting, IEP, and Prior Written Notice to the Director of the Exceptional Children’s Resources on or before **November 4, 2016**.

3. The School shall submit copies of the quarterly progress reports detailing Student’s progress on IEP goals to the Director of the Exceptional Children’s Resources.
4. School must provide professional development to all special education staff regarding IEP development and service delivery. This professional development must include the following topics:
 - a) Evaluation timelines,
 - b) Documentation required in the completion of an Evaluation Summary Report,
 - c) Documentation required for frequency, duration, and location descriptions in the IEP,
 - d) Writing measurable IEP goals and benchmarks,
 - e) Requirements of the Prior Written Notice and when it must be completed,
 - f) Permission to Evaluate and when it must be completed,
 - g) Requirements related to students who transfer in to School with IEPs,
 - h) Requirements of Notice of Meeting,
 - i) Progress monitoring, and
 - j) Required participants at IEP meetings.

School will provide evidence of this plan to the Director of the Exceptional Children’s Resources on or before **November 4, 2016**. The professional development must be completed and the associated documentation (sign in sheet, agenda, copy of handouts, copy of Power Point etc.) must be sent to the Director of Exceptional Children’s Resources by **December 9, 2016**.

By: _____
Assigned Investigator