

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 17-06 (November 7, 2016)

On September 8, 2016, Parent filed a complaint with the Delaware Department of Education (“DDOE”). The complaint alleges the Red Clay Consolidated School District (“District”) violated state and federal regulations concerning the provision of a free, appropriate public education (“FAPE”) to Student. The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the DDOE’s 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 documentation provided by Parent. Interviews were conducted with Parent and District staff.

COMPLAINT ALLEGATIONS

The complaint alleges the District violated the Individuals with Disabilities Education Act (“IDEA”) and implementing regulations by failing to provide and implement an appropriate Individualized Education Program (“IEP”) and Behavior Intervention Plan (“BIP”) for Student. The complaint further alleges the District violated the IDEA by failing to provide Student with appropriate Extended School Year (“ESY”) services.

FINDINGS OF FACT

1. Student is x years of age and enrolled in the x grade. Student has been identified as a student with a disability under the classification of “Emotional Disability” as defined in 14 DE Admin Code § 925.6.9. Student receives special education and related services at (“School”) and received Federal ESY services at (“ESY School”) pursuant to the IDEA and 14 Del. C. § 3101 *et seq.*

Student’s Individualized Education Program and Behavior Intervention Plan

2. Student’s current IEP and BIP were developed at an IEP meeting held on October 6, 2015.
3. Student’s educational needs are written expression. Student also requires supports and services to address Student’s behavioral needs of non-compliance, verbal outbursts, and disruptive behavior. The IEP Team determined Student’s behavior impedes Student’s learning and the learning of others. Student therefore requires positive behavior interventions, supports, and services.

4. Student's IEP provides academic and behavioral services in a separate special education classroom within an integrated setting. Services include individual and consultative occupational therapy and individual psychological counseling.
5. Additional meetings were held to review and revise Student's IEP and BIP on October 27, 2015, February 19, 2016, March 18, 2016, and June 1, 2016.
6. Student's BIP includes preventative modifications to Student's daily schedule and instruction, alternative skills to teach, a positive behavior reinforcement system, a safety plan, and methods of evaluation and monitoring.
7. Psychologist reported Student's BIP was developed through observations, conversations with school staff, Parents, and conversations with Student's outside private therapist.
8. On October 27, 2015, an IEP meeting was held to review and revise Student's IEP. Revisions to the IEP included changing Student's educational placement in Setting A to a more restrictive placement in Setting C. Student's behaviors warranted a smaller teacher to student ratio. As a result of this setting change, Student's schedule included 1:1 instruction for English language arts, specials, accompaniment of Behavior Interventionist during math, science, social studies, and technology classes.
9. Principal reported after the October 27, 2015 IEP meeting, Guidance Counselor was assigned to Student during indoor and outdoor recess to provide supervision and monitor Student's behavior.
10. At the October 27, 2015 IEP meeting, the Educational Diagnostician ("ED") reported that an application for Student to receive 1:1 paraprofessional support had been submitted to the Supervisor of Special Education ("Supervisor"), and the Supervisor denied the application. The IEP Team did not document in Student's IEP or meeting minutes that Student's 1:1 support had to be provided by a paraprofessional. Rather than assigning Student a 1:1 paraprofessional, the IEP Team changed Student's educational placement to a more restrictive placement to permit Student to receive 1:1 instruction for English language arts and specials. Principal also rearranged staff assignments and schedules to ensure Student received the required 1:1 support and supervision throughout the day for academics and recess.
11. At the October 27, 2015 IEP meeting, the statement "Student needed a written schedule of all behavior expectations that consisted of simple daily activities that are in explicit measurable terms" was added to the educational needs section of the IEP.
12. Special Education Teacher reported a sample point card was provided by District Autism Specialist. The point card was then individually designed for Student's needs and schedule by Special Education Teacher with input from School staff.

13. Student's BIP includes a point card with behavioral expectations. The point card follows Student's daily schedule with 24-28 activities listed and was revised twice during the school year. Student carried and marked the point card when activities were complete or not complete. Daily rewards were determined by Student and Special Education Teacher in a morning meeting.
14. Psychologist reported teachers write notes on the point card and provide input to Principal. Principal reported the point card is emailed to both Parents and to Student's private therapist on a daily basis. Psychologist reported that beginning in May, a two week summary of point cards was sent home to Parent, as requested.
15. On February 19, 2016, an IEP meeting was held to revise Student's IEP and BIP and determine Student's continued eligibility for special education and related services. Meeting minutes indicate ESY was discussed and a determination of Student's eligibility for ESY would be deferred until the spring. An Evaluation Summary Report was completed. Student continued to qualify as a student with an Emotional Disability. School made revisions to the BIP which included Student working 1:1 with a staff member for the majority of the day to decrease behavioral referrals.
16. On March 18, 2016, Parent requested an IEP meeting to revise the BIP. The School addressed Student's behavior by making revisions to the BIP to include differential reinforcement, verbal warnings, reduction in demands, increase in the number of breaks, praise for verbalizing feelings, advanced notice of schedule changes, and transition strategies.
17. On June 1, 2016, an IEP meeting was held to revise Student's IEP and discuss ESY and Student's behaviors. Meeting minutes indicate Student qualified for Federal ESY services. Revisions to the IEP included the addition of a written expression goal, a behavior goal to address noncompliance, ESY services for regression/recoupment for writing skills, and counseling for behavior goals, routines, and transitions.
18. Student's BIP indicated that behavior data would be collected by using the referral action program ("RAP") data.
19. A review of the RAP data for the school year indicates Student was suspended out of school for seven days. Four of those suspensions resulted from throwing objects at a person or persons and a three-day suspension resulted from punching and pushing another student and punching a teacher. Principal reported that for each occasion, Parent was contacted and came into School for a conference.
20. Staff reported RAP data was used to develop and revise Student's behavioral goals and is reflective of Student's triggers and antecedents to challenging behaviors.
21. Parent reported Student met with School Resource Officer several times, but no charges were filed.

22. Parent claims Parent was notified by the School to pick Student up early an estimated six times due to Student's disciplinary behavior and safety issues. Discipline records reflect Student received an out of school suspension on October 2, 2015 from a behavior incident that occurred on October 1, 2015. Student's attendance record reflects that Student was dismissed early at 10:00 a.m. on October 1, 2015. Principal reported that Parent was contacted and asked to pick Student up on October 1, 2015 due to defiant behavior. Student's attendance record does not reflect six early dismissals as alleged by Parent, but does reflect an early dismissal on October 1, 2015 due to Student's behavior.
23. Parent reported that Student's behavior was documented in RAP 46 times. Investigator identified 42 incident reports involving defiance, disrespect, offensive touching, and safety violations. The IEP Team revised Student's IEP and BIP throughout the school year in response to Student's behaviors and educational needs. The February 19, 2016 IEP revisions addressed Student's behavior infractions by adding 1:1 support through most of the day. The March 18, 2016 IEP revisions included the addition of differential reinforcement, introduction of a new reinforcer, and changes to the reinforcement system and responding to behaviors of concern.
24. The School's revisions to Student's IEP met Student's behavioral needs as evidenced in a decrease in the frequency of Student's challenging behavior since the changes were implemented.
25. A review of IEP behavior goals also indicate quarterly updates and progress reporting were provided.

Extended School Year Services

1. The IDEA requires public school districts to ensure that ESY services are available as necessary to provide a free appropriate public education ("FAPE") to children. ESY services must be provided if a child's IEP Team determines the services are necessary to provide FAPE to the child. Eligibility is based on the individualized needs of the child.
2. IEP meeting minutes from February 19, 2016 indicate Student's eligibility for ESY services would be determined in the spring. According to Special Education Teacher, Parent requested ESY services at the February 19, 2016 IEP meeting. Parent reported ESY services were requested at the March 18, 2016 IEP meeting.
3. On April 13, 2016, Parent sent an E-mail to Principal inquiring about the status of Student's eligibility for ESY services.
4. On April 13, 2016, Principal responded to Parent that Supervisor denied ESY services for Student because it was not an academic based need. In May 2016, ED shared the same information with Parent. In response, Parent requested an IEP meeting.

5. On June 1, 2016, an IEP meeting was held to discuss Student's eligibility for ESY services. The IEP Team agreed Student required ESY services to receive FAPE. The IEP Team determined Student met the regression and recoupment criteria for written expression, and required counseling to address behavior goals, routines, and transitions. Parent was in agreement.
6. Principal reported the building location for Student's ESY services would be determined at the District level, and was therefore not known at the time of the June 1, 2016 IEP meeting when Student's educational needs were discussed.
7. After the June 1, 2016 IEP meeting, ED sent Student's ESY referral to the Supervisor. The referral included Student's June 1, 2016 IEP, meeting minutes, FBA and BIP, Prior Written Notice, Notice of Meeting, and Student's behavior contract/point card that was implemented at School. This was verified by the Investigator.
8. The IEP Team determined Student would receive ESY services at ESY School.
9. According to the ESY Coordinators, Supervisor, and ESY Teacher, Student's behavior contract/point card was not included in the ESY request form. Rather, the ESY Coordinators obtained the Student's documents from IEPPLUS.
10. The ED identified Student as having an Emotional Disability on Student's ESY request form, and included Student's BIP eligibility for ESY services based on regression and recoupment, and identified needs for written expression, behavior and counseling. In the Related IEP Goals section, ED wrote "written expression/behavior goal/ BIP-see checklist (point card) used daily".
11. Student's June 1, 2016 IEP revision for behavior goals states "added goals for increasing daily checks on daily contract." Student's June 1, 2016 IEP was forwarded to the ESY School with the ESY request form.
12. ESY Coordinator reported, the ESY School did not focus on the content of Student's IEP, but focused on the rationale for Student's eligibility for ESY services as described on the ESY request form.
13. ESY staff also did not use the behavior contract/point card identified in Student's IEP, but instead developed another system for monitoring and addressing Student's behavior. According to an interview with the Director of Special Services ("Director"), ESY staff felt they implemented Student's IEP by creating a data analysis sheet and using a sticker reward system for behavior. However, the data analysis sheet used by ESY staff was not sent home daily to keep Parent informed of Student's behaviors each day as required by Student's IEP.
14. ESY Teacher reported Student's behavior point card was specific to Student's schedule at School. Therefore, the ESY staff used the sticker chart to reward Student's IEP behaviors for each subject taught during ESY services.

15. The ESY staff also used pictures from Student's BIP to de-escalate Student's behavior. This was verified in a July 19, 2015 E-mail sent from ESY Coordinator to Supervisor that referenced using the pictures in Student's BIP for de-escalation strategies.
16. Student received ESY services at ESY School from 8:30 to 11:45 a.m., Mondays through Thursdays, from June 22 through July 27, 2016. There were no classes on July 4 and 5, 2016. Student was assigned to a x grade classroom with approximately 10 students and 2 adults.
17. At the beginning of the extended school year, Principal contacted ESY Coordinator to check on Student's behavior and was told Student had no behavior issues.
18. On June 27, 2016, Student had first behavior incident. ESY Coordinator called Parent to report Student was using inappropriate language. Student then had seven more behavioral incidents within the next ten days involving disruption of the learning process, verbal non-compliance, inappropriate language, verbal aggression towards staff, and throwing objects.
19. Student's last day at ESY School was July 14, 2016. The ESY School suspended Student for behavior and provided Student with home-based services for counseling and writing goals.
20. Prior to removing Student from the ESY classroom setting, the ESY School did not convene an IEP Team meeting to address Student's behaviors, nor did the ESY School conduct a manifestation determination to review the nature of Student's behaviors as it related to Student's emotional disability, IEP, and behavior supports.
21. On July 15, 2016, Parent E-mailed ESY Coordinator and asked for the behavior incident report, completed point sheets, and counseling session data. According to Parent, Parent assumed the ESY School was implementing Student's behavior contract/point card as described in Student's June 1, 2016 IEP.
22. On July 18, 2016, Parent again E-mailed Supervisor and requested behavior incident reports for ESY. On July 20, 2016, Supervisor E-mailed a summary of the behavior incidents to Parent.
23. On July 18, 2016, ESY Coordinator E-mailed Parent counseling data and informed Parent that in lieu of using Student's behavior point card/task analysis sheet, ESY staff utilized a sticker chart for rewarding Student's classroom behavior. According to ESY Coordinator, a sticker chart was used every time Student was complying and completing work, and Student earned one sticker per day for positive behavior reinforcement. However, ESY staff had not provided behavior data to Parent on a daily basis as required by Student's IEP.
24. On July 15, 2016, Parent E-mailed Supervisor to inquire about the delivery of ESY services now that Student was suspended from ESY School.

25. On July 18, 2016, Supervisor E-mailed Parent stating ESY services would be provided via home-based support focusing on writing skills, counseling for behavior goals, and routines/transitions. ESY Counselor would provide up to four one-hour sessions.
26. ESY home-based services were provided on July 25, 2016 by the Mental Health Counselor. Additional services were provided on August 15, 16, and 17, 2016 by the School Counselor. A total of four, thirty minute sessions were provided that addressed writing and counseling goals.
27. On August 26, 2016, Director E-mailed ESY Coordinator stating a miscommunication occurred between the School and the ESY School regarding the use of the task analysis sheet and Student's behavior point card. The ESY School did not recognize the task analysis sheet found in the IEP as the point card that Student's School was using to track Student's behavior.
28. On August 25, 2016, an IEP meeting was held to revise Student's IEP and BIP, specifically daily communication arranged with Parent around the point card. The decision was made to send the point card home to Parent via email on a daily basis. Other IEP revisions included the addition of 1:1 support throughout Student's day in academics and transitions and unified arts, identified triggers and actions, a transition support goal, and typing accommodations for written responses.

CONCLUSIONS

A. FAPE Provided to Student During the Regular School Year

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

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 whose behavior impedes the child’s learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. *See*, 34 C.F.R. § 300.324(a)(2)(i); 14 DE Admin Code § 300.24.2.1.

Additionally, the IEP Team may address a child’s behavior through a statement of measurable annual goals in the IEP. *See*, 34 CFR §300.320(a)(2)(i); 14 DE Admin Code §300.200.1.1 The child’s IEP may include program modifications or supports for school personnel, and any related services necessary to achieve those behavioral goals. *See*, 34 C.F.R. §300.320(a)(4); 14 DE Admin Code § 300.20.1.4 If the child needs a BIP to improve learning and socialization, the BIP can be included in the child’s IEP and aligned with the goals in the IEP.

In this case, Student received appropriate positive behavior supports and services. The IEP Team determined at the October 6, 2015 IEP meeting, that Student’s behavior impeded Student’s learning and that of others, and Student required positive behavior interventions, supports and strategies. At the October 27, 2015 IEP meeting, Student’s FBA and BIP were developed with multiple sources of input and data sources. The IEP Team met and revised Student’s IEP and BIP throughout the school year when Student had incidents or patterns of misbehavior. The behavior supports in Student’s IEP and BIP were appropriately revised in response to Student’s specific needs, performance, and data. In addition, Parent was kept informed of Student’s behavior through daily E-mails, and included in the development and revisions of Student’s IEP and BIP. Student’s IEP and BIP were implemented throughout the school year, and tailored to Student’s individualized needs enabling Student to make educational progress. I find the District provided FAPE to Student during the regular school year. **For the reasons stated, I find no violation of the IDEA and corresponding state and federal regulations regarding the provision of FAPE to Student during the regular school year.**

B. Denial of Appropriate Extended School Year Services for Part of Extended School Year

The IDEA and implementing state and federal regulations also set forth requirements for extended school year services. A school district must ensure that extended school year services are available as necessary to provide FAPE to a child, and full consideration must be given to the educational needs of each child. *See*, 34 C.F.R. § 300.106; 14 DE Admin Code § 923.6.0.

Factors are to be considered by the IEP Team in making a decision that, without extended school year services over the summer months, the child would not receive FAPE during the regular school year. Regression is one of the factors that refers to a decline in skills specified on a child’s IEP

which results from an interruption in programming. Recoupment period is the amount of time required for a child to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the IEP Team should consider that this criterion focuses on children who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. *See*, 14 DE Admin Code § 923.6.5.2.

Extended school year services must be based on the individual needs and goals or objectives found within the child's IEP of the school year, though activities may be different. *See*, 34 C.F.R. § 300.106.(b)(1)(ii); 14 DE Admin Code § 923.6.6. Thus, in order to provide FAPE, a school district's ESY services must address the unique needs of the particular child.

In this case, the IEP Team determined at the June 1, 2016 IEP meeting that Student required ESY services to receive FAPE. The IEP Team identified Student's educational needs as writing and counseling for behavior goals, routines, and transitions and considered the effect of regression and recoupment if Student did not receive services through extended year programming.

Importantly, Student's IEP and BIP required Student to receive daily checks on a contract to monitor behavior. Student's behavior contract/behavior point card were included in Student's ESY referral form sent to the ESY School and specifically referenced in the behavior goal section of Student's IEP. Yet, when Student transitioned to the ESY School for the extended school year, the ESY School either did not know or misunderstood how to use Student's behavior contract/point card. Different terms were used by staff to describe Student's behavior point card, and this likely contributed to some misunderstanding when Student transferred to the ESY School. Despite the confusion, the ESY School recognized Student's behavior required monitoring and positive reinforcement. The ESY School thus implemented a sticker chart as a daily contract and reward system to monitor Student's behavior. Although the behavior system used by the School and the ESY School were not identical in construct, both systems monitored and reinforced Student's behavior using similar tools. **As a result, I find the ESY School was monitoring and rewarding Student's behavior in the extended school year as required by Student's IEP and BIP.**

However, Student's IEP also provided that Parent would receive daily reports about Student's behavior each day. The daily reporting of behavior data kept Parent informed of Student's progress and permitted Parent to respond to concerns about Student's behavior in a timely way. The ESY referral form provided to the ESY School noted that daily reports to Parent were required. Yet, the ESY School did not provide daily reports about Student's behavior to Parent, despite the specifications in Student's IEP and ESY referral form that daily reports were required. **As a result, I find the ESY School did not implement the provision of Student's IEP requiring reports of behavior data to Parent on a daily basis.**

In addition, Student was suspended from the ESY School on or about July 14, 2016, and not permitted to return for the remainder of the extended school year as a result of behavior. The ESY School removed Student from the ESY classroom setting without convening an IEP Team meeting or conducting a manifestation determination to review and discuss the nature of Student's behaviors in the extended school year setting as it related to Student's emotional disability. The IEP Team could have met to consider whether Student's behavior supports required modification

based on patterns of behavior or misconduct. Parent had also not received daily reports of Student's behavior during the extended school year as required by Student's IEP. The ESY School ultimately provided ESY services to Student for the remainder of the extended school year, but in a more restrictive home-based setting. For these reasons, **I find a violation of the IDEA and corresponding state and federal regulations regarding failure to conduct a manifestation determination, as well as failure to provide appropriate ESY services to Student following the July 14, 2016 disciplinary removal through the remainder of the extended school year.**

C. IEP Team Determines Necessity of ESY Services and 1:1 Support Based on Student's Educational Needs

A child's IEP must be developed, reviewed, and revised by the child's IEP Team at a properly convened team meeting. *See*, 34 C.F.R. §§ 300.320 to 300.324; 14 DE Admin Code §§ 925.20 to 24.0. The child's IEP Team determines the services and supports the child requires to receive FAPE based on the child's unique educational needs. Delaware regulations further require that a school district representative attend a child's IEP Team meeting with authority to commit school district resources and ensure that services set out in the IEP will actually be provided. *See*, 14 DE Admin Code § 925.21.1.4.4.

ESY services must be provided if a child's IEP Team determines the services are necessary to provide FAPE to the child. Eligibility is based on the individualized needs of the child as determined by the child's IEP Team. *See*, 34 C.F.R. § 300.106(2); 14 DE Admin Code § 923.6.2.

In this case, Parent began advocating for ESY services in March 2016. The Principal informed Parent in April 2016 that Supervisor had denied ESY services because Student had no academic need for ESY services. The ED then confirmed the same information to Parent. In response, Parent requested an IEP Team meeting. When the IEP Team convened in June 2016, the IEP Team decided Student met the eligibility requirements and required ESY services to receive FAPE. It was error for the school administrators to inform Parent that Student was not eligible for ESY services. Student's eligibility for ESY services is an IEP Team decision, and not a unilateral decision to be made by school administrators. **As a result, I find a procedural violation of the IDEA and corresponding state and federal regulations requiring that a child's eligibility for ESY services be determined by a child's IEP Team.**

Similarly, the ED reported that Supervisor administratively denied an application for Student to receive 1:1 support from a paraprofessional. If the IEP Team determined Student required 1:1 support from a paraprofessional, such support must be provided. The IEP Team determines the services and supports a child requires to receive FAPE, and the services cannot be administratively denied or withheld by school officials. In this case, the IEP Team did not specifically document in Student's IEP or meeting minutes that Student required 1:1 support from a paraprofessional. Ultimately, Student received 1:1 support as the Principal rearranged staff assignments and schedules to ensure Student received the 1:1 support. Yet, the facts demonstrate some misunderstanding of the requirement that all services be provided to a child as determined necessary by a child's IEP Team. Accordingly, the District is directed to take corrective action, as described below.

D. Student's Early Dismissal on October 1, 2015 as Out of School Suspension

School officials may remove a child with a disability from his or her current educational placement for up to ten consecutive school days in a school year, and for additional removals of for up to ten school days in the same school year for separate incidents of misconduct, provided the additional removals do not constitute a change of placement. *See*, 34 C.F.R. §§ 300.530(b) and 300.536; 14 DE Admin Code §§ 926.30.2 and 926.36.0.

In this case, Student's discipline record reflected seven days out of school suspension in the 2015-2016 school year. Parent claims Parent was notified by the School to pick Student up early an estimated six times due to Student's disciplinary behavior and safety issues. However, Student's attendance record does not reflect six early dismissals as alleged by Parent, but does reflect an early morning dismissal on October 1, 2015 due to Student's behavior. Discipline records reflect Student received an out of school suspension on October 2, 2015 from a behavior incident that occurred on October 1, 2015. Student's attendance record reflects that Student was dismissed early at 10:00 a.m. on October 1, 2015. Principal reported that Parent was contacted and asked to pick Student up early on October 1, 2015 due to defiant behavior.

Student's exclusion from School on October 1, 2015 was, in effect, an out of school suspension, and should have been reported as such. Student was asked to leave school early, and missed instructional time and participation in school activities due to behavior. School districts are cautioned that exclusionary disciplinary practices requiring children to repeatedly leave school early and miss instructional time due to shortened days can rise to the level of a disciplinary change of placement. *See*, U.S. Department of Education's *Dear Colleague Letter* dated August 1, 2016 (attached). **For the reasons stated, I find Student's dismissal from School the morning of October 1, 2015 should have been reported as an out of school suspension.**

CORRECTIVE ACTIONS

To address the regulatory violations noted in this Decision, the DDOE directs the District to take the following corrective actions:

Student Level Corrective Actions

1. On or before December 15, the District shall convene an IEP Team meeting to conduct a manifestation determination and review of Student's IEP and BIP to determine the nature of Student's behaviors as it relates to Student's emotional disability and the behaviors that resulted in Student's suspension from the extended school year classroom setting. The IEP Team shall revise Student's IEP and BIP as necessary to ensure Student's positive behavior supports, services, and strategies are appropriate and tailored to Student's unique needs. Documentation evidencing completion of this action shall be provided to the Director of Exceptional Children Resources for the DDOE on or before December 20, 2016.

2. On or before December 15, 2016, the District shall develop a written plan to provide Student with compensatory instruction calculated from Student's July 14, 2016 disciplinary removal from the ESY classroom setting through the remainder of the days of the 2015 - 2016

extended school year. The District shall calculate and submit the number of hours owed to Student, as well as a description of how the hours were calculated. The District shall submit a plan for delivering the compensatory instruction, including a timeline for service delivery and how the services shall be provided. Said written plan and calculation of hours owed shall be provided to the Director of Exceptional Children Resources for the DDOE on or before December 20, 2016.

District Level Corrective Actions

1. On or before March 1, 2017, the District shall review its ESY policies, practices, and procedures and revise as necessary to ensure a smooth transition of special education service provision during the extended school year among schools. As necessary, the District shall develop a written procedure to ensure that IEPs are properly implemented during the provision of ESY, and ESY staff understand the requirement that a child's IEP must be implemented during the extended school year. Documentation evidencing completion of this action shall be submitted to the Director of Exceptional Children Resources for the DDOE on or before March 1, 2017.

2. On or before March 1, 2017, the District shall ensure professional development is provided to all special education staff in the District, including District office special education staff, regarding IEP development, implementation, and service delivery. The professional development shall address the compliance issues identified in this Decision, and include the following subjects:

- a) A child's IEP and behavior supports must be implemented in the extended school year as determined by the child's IEP Team.
- b) A manifestation determination, and/or IEP meeting should be held to review and revise a child's IEP to ensure appropriate behavior supports are provided, prior to excluding the child from an ESY classroom setting as a disciplinary removal or long term suspension.
- c) A child's eligibility for ESY services is determined by the child's IEP Team, and not unilaterally by school administrators and staff.
- c) A child's IEP team determines the services and supports the child requires to receive FAPE, and said services cannot be administratively denied or withheld by school officials.
- d) Exclusionary disciplinary practices requiring children to repeatedly leave school early and miss instructional time due to shortened days can rise to the level of a disciplinary change of placement as defined in the IDEA, and thus invoking procedural safeguard requirements and the provision FAPE to Student during removals.

Copies of professional development materials, agendas, and attendance rosters shall be provided to the Director of Exceptional Children Resources for the DDOE on or before March 1, 2017.

3. The District shall distribute the U.S. Department of Education's *Dear Colleague Letter* dated August 1, 2016 (attached) to all special education staff in the District, and District and school administrators involved in school discipline matters, including principals and assistant principals.

By:
Assigned Investigator