

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**ADMINISTRATIVE COMPLAINT  
LETTER OF FINDINGS**

**DE AC 17-07 (December 29, 2016)**

On October 31, 2016, Parent filed a complaint with the Delaware Department of Education (“DDOE”). The complaint alleges the Brandywine School District (“District”) violated state and federal regulations concerning the provision of a free, appropriate public education (“FAPE”) to Student under the Individuals with Disabilities Education Act (“IDEA”).<sup>1</sup> 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, correspondence with Parent and school staff, as well as documentation provided by Parent, including Student’s work samples in xx and yy classes. Interviews were conducted with Parent, school staff, and the Director of Special Education and Student Supports.

**COMPLAINT ALLEGATIONS**

Parent alleges the District violated Part B of the IDEA and implementing regulations, as follows:

1. The District failed to provide Parent with revised Individualized Education Program (IEP) goals added to Student’s IEP as a result of a September 16, 2016 IEP Team meeting.
2. Parent was denied participation in an October 24, 2016 decision concerning Student’s educational placement.
3. The District failed to provide the supports and accommodations required by Student’s IEP for written expression needs in the xx and yy classes for the 2016-2017 school year.

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

## **FINDINGS OF FACT**

1. Student is x years of age and enrolled in the x grade at (“the School”) in the District.
2. Student is identified as a student with a “learning disability” as defined in 14 DE Admin Code § 925.6.11 in the area of mathematics problem solving. Student receives special education and related services pursuant to the IDEA and 14 Del. C. § 3101 *et seq.*

### **Student’s Individualized Education Program**

3. Student’s current IEP was developed at a February 4, 2016 IEP Team meeting when Student was in the x grade.
4. The School provided timely written notice of the February 4, 2016 IEP meeting to Parent and Student. Student was invited to participate as Student’s transition goals and services would be discussed.
5. The IEP Team members included Parent, Student, two general education teachers, a special education teacher, the school psychologist, and the Educational Diagnostician, serving as the District representative’s designee.
6. The IEP indicates Student’s educational needs include written expression, math reasoning, and math computation.
7. The IEP refers to Student’s needs in written expression as:
  - (a) Student struggles with organizing his/her thoughts, grammar, and punctuation.
  - (b) Student often has all information, but “it is all over the place within the paper”.
  - (c) Sometimes, Student misses the main point of what the question is asking but he/she is able to explain the answer verbally.
  - (d) Student needs help with organization, using relevant details to support his/her answer. Reminders to slow down and check and re-read his/her work will help him/her to edit and catch his/her own mistakes.
  - (e) Teachers should also assist Student with editing, spelling, and grammar so Student can learn from his/her mistakes.

8. The IEP refers to Student's needs in math reasoning and computation as:
  - (a) Student has a weakness in the area of evaluating and using variable expressions and solving fractions and decimals.
  - (b) Student struggles with multiple step equations or problems.
  - (c) Student lacks confidence in math which also causes a little anxiety for him/her. He/She never gives up though.
  - (d) Student needs continual practice with multiplication and division. He/She knows his/her basic facts but needs routine practice with multi-digit problems in order to commit the process to memory.
  
9. Student's IEP has three annual goals in math computation, and one annual goal in written expression, with quarterly benchmarks to measure Student's progress.<sup>2</sup> Student's annual IEP goal and quarterly benchmarks for written expression are stated in objective, measurable terms enabling Student to make progress in the general education curriculum. A standardized writing rubric is also attached to the IEP for implementation of the written expression goal. Student's IEP similarly contains a measurable statement of Student's present level of performance in written expression skills.
  
10. The IEP describes the classroom supports and services Student requires on an individualized basis to address his/her needs in written expression:
  - (a) Prompts and directions to be read aloud;
  - (b) Use of a graphic organizer;
  - (c) Teacher modeling of proper responses and techniques;
  - (d) Teacher as spelling resource and dictionary;
  - (e) Examples for writing tasks;
  - (f) Teacher assistance in organizing ideas;

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As stated above, Parent's complaint focuses on the non-implementation of Student's IEP related to written expression in the xx and yy classes during the 2016-2017 school year. As such, the findings of fact address the specific area of written expression in Student's IEP as the subject of Parent's complaint.

- (g) Opportunities for repeated practice;
  - (h) Reminders to give relevant details to support answer;
  - (i) Extended time for assignments (up to a week);
  - (j) Assessments (three times the normal testing period);
  - (k) Check for understanding of directions;
  - (l) Use of highlighter as needed;
  - (m) Use of checklist for writing and editing;
  - (n) Reading of test directions as needed; and
  - (o) Assistance with graphic organizers for facts and opportunities for corrections.
11. The IEP Team concluded Student's educational needs could be met in the general education setting, and noted Student requires specialized instruction and accommodations in the areas of written expression and math computation in order to make meaningful progress in the general education curriculum. The IEP Team noted Student would continue to benefit from the Academic Support class in his/her schedule, which included small group and direct instruction from a special education teacher.
12. On February 4, 2016, Parent signed the IEP in agreement with the proposed program and placement. The School provided Parent with timely prior written notice proposing the IEP.
13. Student's IEP was implemented for the remainder of the 2015-2016 school year. A June 10, 2016 quarterly progress update notes Student was making sufficient progress toward mastery of his/her IEP goals.
14. Student's final grades for the 2015 - 2016 school year were as follows: "x" in Language Arts; "x" in Math; "x" in Science; "x" in Social Studies; "x" in Health; "x" in Physical Education; "x" in History in Film, and "x" in the Academic Support class.

**Relevant Facts from the 2016 - 2017 School Year**

15. Student is attending The School for the x grade school year.
16. On September 16, 2016, the School convened an IEP Team meeting at Parent's request to consider Student's possible dismissal from special education later in the school year. Parent also wanted to discuss strategies to improve Student's self-advocacy skills to enable him/her to access help within the classroom and become more independent.
17. The IEP Team members included Parent, Student, the special education teacher, a general education teacher, and the Educational Diagnostician, serving as the District representative's designee.
18. At the September 16, 2016 meeting, the IEP Team reviewed Student's IEP and agreed it was providing Student with the necessary supports he/she required to make progress in the general education curriculum. The IEP Team discussed Student's potential dismissal from special education later in the school year, as well as Student's potential eligibility for a Section 504 Plan if he/she were dismissed from special education. No decisions about eligibility were made at the IEP Team meeting, and Student's IEP was not revised.
19. During the investigation, the Special Education Case Manager and Educational Diagnostician confirmed Student's IEP was not revised at the September 16, 2016 IEP Team Meeting.
20. The Educational Diagnostician also sent timely prior written notice to Parent confirming Student's IEP was not revised as a result of the September 16, 2016 IEP Team Meeting, and the IEP Team would wait until his/her IEP annual review date in February 2017 to determine any changes.
21. Student is enrolled in xx and yy classes for the x grade, as well as an Academic Support class.
22. The xx and yy classes have approximately thirty (30) general education students in each class, and Student is the only child with an IEP. There is no "push in" support from a special education teacher in the classes to assist Student or other students with assignments, writing assignments, or assessments.
23. Student attends an Academic Support class for ninety (90) minutes every other day with a small group of eight (8) other students in the same grade. During Academic Support class, Student receives small group and direct instruction from

the Special Education Teacher in the areas of written expression, reading, and math. The Special Education Teacher works on writing practice and prompts daily with Student, as well as math computation, including fractions, decimals, and solving algebraic equations. Class time is also spent working with Student one-on-one on his/her xx assignments and other classwork, if time permits.

24. When interim progress reports were distributed in October 2016, Parent noticed Student had a “x” in xx class. Parent was concerned, and contacted the xx Teacher on October 11, 2016 to request a conference to discuss Student’s grade.
25. On October 18, 2016, Parent had a phone conference with the xx Teacher to discuss Student’s grade. The xx Teacher expressed concern with Student’s ability to understand xx concepts through his/her writing based on assignments and assessments. The xx Teacher advised Parent he/she does not spend much time discussing grades in class, and Student could meet with him/her any time before or after school to discuss grades.
26. On October 23, 2016, Student stayed after xx class to discuss his/her grade with the xx Teacher and review some concepts he/she was misunderstanding. Parent reports the meeting did not go well for Student, and it caused Student to feel more anxious about his/her performance. The xx Teacher reports he/she enjoys working with Student, he/she provides support to Student when he/she notices he/she is struggling, and he/she is willing to meet with Student any time for extra help.
27. After speaking with the xx Teacher and Student, Parent developed a belief Student was not a “fit” for the xx Teacher’s classroom or teaching style.
28. On October 24, 2016, Parent sent an E-mail to the Principal, the xx Teacher, the Dean of Students, and the School Counselor requesting Student be moved into another period xx class.
29. In response, the Dean of Students and the School Counselor met with Student, and asked if Student was aware of Parent’s E-mail requesting that Student be assigned to another xx class. Parent claims that Student was upset by this meeting with the Dean of Students and the School Counselor, and Student felt like he/she was in trouble.
30. The Dean of Students and School Counselor contacted Parent by phone on October 24, 2016, and advised Parent they had spoken to Student about Parent’s request for reassignment to another xx class. They asked if Parent was aware that Student had an “x” in the xx class. The Dean of Students further stated his/her belief Student really did not like the way the xx Teacher graded, and the Dean of Students could not accommodate schedule changes every time a student did not like something about his or her teacher.

31. Parent then sent an E-mail to the Principal on October 28, 2016 requesting Student be moved to another xx class.
32. On October 31, 2016, the Principal met with Parent to discuss his/her concerns. Parent requested that Student be moved to another xx class based, in part, on his/her belief Student's IEP was not being followed in the xx class. As an example, Parent cited the IEP provision requiring Student to receive extended time for assignments (up to a week) and assessments (three times the normal testing period). The Principal reserved decision, and agreed to investigate his/her concerns.
33. On October 31, 2016, Parent filed this complaint with the DDOE.
34. On November 3, 2016, Principal sent an E-mail to Parent advising that Student would not be moved to another xx class. Principal responded that Student has an "x" average in the class, and moving Student to another xx class would necessitate moving him/her from a classroom of thirty (30) students to a classroom of thirty-four (34) students. It would also require a change to three (3) other classes, and those classes were near capacity. The Principal also conferred with the xx Teacher, and concluded Student was receiving extended time on assignments and assessments as required by Student's IEP.
35. Parent confirmed he/she does not dispute the content of Student's IEP. In the complaint, Parent claims Student is not receiving the individual supports and accommodations to address Student's written expression needs in the xx class. After filing the complaint, Parent raised the additional concern the accommodations are also not provided in the yy class.
36. The xx Teacher and yy Teacher both have a copy of Student's IEP and are familiar with the provisions, including the supports listed to address Student's written expression needs. (*See*, paragraphs 8 and 11).
37. The xx Teacher reports Student's writing skills are weak and disorganized.
38. The xx Teacher reports he/she generally provides the same supports and accommodations described in Student's IEP to all students in the classroom. For example, the xx Teacher confirmed he/she provides all students in the class with extended time and repeated practice. Graphic organizers are used, directions are repeated and explained, proper responses are verbally modeled, teacher serves as spelling and vocabulary resource, key vocabulary words are posted, and teacher assistance is routinely provided to students, often to include the xx Teacher writing comments on the students' assignments for the students to correct their work.

39. During the investigation, Parent provided several examples of Student's xx assignments that were returned to Student with written comments from the xx Teacher requiring Student to correct his/her written answers. One comment noted Student's written answer "makes no sense" and provided no other guidance. Another comment stated "not really" next to Student's written answer. Other comments involved highlighting terms and using short phrases that did not model proper written responses for Student.
40. Parent claims, while Student may receive extended time and opportunities for repeated practice on xx assignments, extended time becomes useless for Student if the xx Teacher is not also modeling proper written responses and providing Student with assistance in organizing ideas in his/her written responses.
41. Parent claims the xx Teacher's provision of short written comments on Student's assignments for written expression does not inform Student how his/her written responses are wrong, and need to be corrected.
42. The examples provided by Parent demonstrate Student is not receiving the supports in his/her IEP consistently for written expression, to include modeling of proper responses, providing examples of writing tasks, and assistance with organizing ideas.
43. While Student has an "x" average in the xx class, Parent reports it is attributable to Student diligently working over periods of time to do what it takes to complete the xx assignments satisfactorily, resulting in some anxiety for Student. Parent desires for Student to receive the supports specified in Student's IEP in class for writing tasks to enable Student to progress, and avoid feeling anxious and overwhelmed.
44. Parent reports Student is unaware of the supports in his/her IEP for writing tasks in the classes, and it is difficult for him/her to seek help when needed.
45. The yy Teacher reports Student is at the top of the class verbally with excellent opinions.
46. The yy Teacher also explained he/she generally provides the same supports and accommodations for written expression to all students in the classroom. The yy Teacher did not describe how Student is supported any differently than the other students based on his/her individualized needs in the IEP.
47. As mentioned, there is no "push-in" special education support in the classes. Student will work on xx assignments and classroom work with individualized support from the Special Education Teacher during Academic Support class, if time permits.

## CONCLUSIONS

### *A. No Procedural Violation Involving the September 16, 2016 IEP Team Meeting.*

Parent alleges the District failed to provide revised goals allegedly added to Student's IEP as a result of the September 16, 2016 IEP Team meeting. Yet, the record is clear Student's IEP was not revised at the September 16, 2016 IEP Team meeting. Prior written notice was provided to Parent in a timely manner, and confirmed Student's IEP was not revised at the IEP Team meeting, and the IEP Team deferred any revisions until Student's IEP annual review in February 2017. **As a result, I find no violation of Part B of the IDEA and corresponding State regulations related to Student's IEP and the September 16, 2016 IEP Team Meeting.**

### *B. No Denial of Parental Participation in Educational Placement Decisions.*

State and federal regulations require schools to ensure one or both parents are afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of a child with a disability, and the provision of FAPE to the child. *See*, 34 C.F.R. § 300.501(b)(1); 14 DE Admin Code § 926.1.3. Schools must also ensure the parent of each child with a disability is a member of any group that makes decisions on the educational placement of the child. *See*, 34 C.F.R. § 300.501(c)(1); 14 DE Admin Code § 926.1.4. Decisions involving identification, evaluation, educational placement, and the provision of FAPE to a child are made at an IEP Team meeting. Schools must provide notice at least ten (10) school days prior to an IEP Team meeting, and describe the purpose, time, and location of the meeting, and who will be in attendance. *See*, 14 DE Admin Code § 925.22.1; 34 C.F.R. § 300.322(b)(1).

In this case, Parent claims the District violated his/her right to parental participation in placement decisions concerning his/her child when the Dean of Students and the School Counselor met with Student on October 24, 2016 to discuss Student moving to another period xx class. However, the Dean of Students and the School Counselor did not make a decision concerning Student's educational placement. Rather, they discussed the potential for Student to be reassigned to another classroom within the same general education setting. Reassignment to another classroom within the same general education setting does not constitute an educational change in placement. **As a result, I find no violation of Part B of the IDEA and corresponding State regulations regarding parental participation in educational placement decisions involving Student.**

**C. *Procedural Violation Regarding Implementation of Student's IEP.***

Student has a unique educational need for specialized support in the area of written expression. Student's IEP describes the supports and accommodations Student requires in written expression to receive FAPE. During the investigation, Parent provided concrete examples to evidence the accommodations and classroom supports are not consistently provided to Student in the classes, primarily related to teacher modeling proper responses, provision of examples of writing tasks, and teacher assistance with organizing ideas. The xx Teacher and yy Teacher confirmed Student is not supported any differently than the other students in the general education classes. **For the reasons stated, I find a violation of Part B of the IDEA and corresponding State regulations regarding the implementation of Student's IEP for written expression in the xx and yy classes.** I further note these findings do not reflect the failure of any individual teacher to provide educational services to Student. Rather, the findings reflect the need for the IEP Team, which includes the xx and yy teachers, to convene and discuss how to implement the student's IEP in the general education classes.

**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 February 20, 2017, the District shall convene an IEP Team meeting, which includes the xx and yy teachers, to discuss how to implement the student's IEP in the general education classes. The IEP Team shall revise Student's IEP as necessary to ensure Student's needs for written expression are met, and the appropriate resources are available and provided. The IEP Team should also develop a plan for ensuring the Student has targeted self-advocacy/self-determination goals. The goal of the plan should be to assist the student to be able to actively and effectively participate in the general curriculum and self-advocate for the services needed for him/her to be successful in the classroom and in life.

The District shall provide a copy of the IEP and prior written notice to the Director of Exceptional Children Resources for the DDOE on or before February 28, 2017.

2. On or before February 20, 2017, the District shall develop a written plan to provide Student with fifteen (15) hours of compensatory instruction. The District shall submit a plan for delivering the compensatory instruction, including a timeline for service delivery and how the services shall be provided, in consultation with Parent. Said written plan shall be provided to the Director of Exceptional Children Resources for the DDOE on or before February 28, 2017.

### **School and District Level Corrective Actions**

1. On or before April 15, 2017, the District shall ensure professional development is provided to all general education and special education staff at the School, and all educational diagnosticians in the District, including District office special education staff and administrators regarding IEP implementation and service delivery in level classes and across general education settings. The professional development shall address the compliance issues identified in this Letter of Findings.
2. Copies of professional development materials, PowerPoint presentations, agendas, and attendance rosters shall be provided to the Director of Exceptional Children Resources for the DDOE on or before April 28, 2017.

**By:**  
**Investigator**