

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 17-11 (August 24, 2017)**

On June 30, 2017, Parent filed a complaint with the Delaware Department of Education (“the Department”). The complaint alleges that (“the School”) violated state and federal regulations concerning the provision of a free, appropriate public education to Student (“FAPE”). The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the Department’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records, correspondence between the School and Parent, and documentation provided by Parent. Interviews were conducted with Parent and relevant School staff.

**ONE YEAR LIMITATIONS PERIOD**

In accordance with the Individuals with Disabilities Education Act (“IDEA”) and corresponding state and federal regulations, the complaint must allege violations that occurred not more than one (1) year prior to the date the Department receives the complaint. *See*, 34 C.F.R. § 300.153(c); 14 DE Admin Code § 923.53.2.4. In this case, the Department received the complaint on June 30, 2017. Therefore, the Department’s findings address alleged violations from June 30, 2016 to the current.

**COMPLAINT ALLEGATIONS**

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

1. Parent was denied proper notice of Individualized Education Program (“IEP”) Team meetings.
2. Parent was denied prior written notice (“Prior Written Notice”).
3. The School made educational decisions concerning Student’s program and placement outside of IEP Team meetings, and Parent was denied participation in such decisions.
4. The School failed to find Student eligible for extended school year services at the conclusion of the 2016-2017 school year.
5. The School failed to provide occupational and physical therapy services to Student.

6. Student was denied FAPE for the duration of the 2016-2017 school year on the basis his behavioral, social, and academic needs were not met and Student failed to make educational progress.

### **FINDINGS OF FACT**

Based upon the information provided by the School and Parent, the Department makes the following findings of fact:

1. Student is x years of age and will be attending the x grade during the 2017-2018 school year. Student receives special education related services at the School pursuant to the IDEA and 14 Del. C. § 3101 *et seq.* Student is identified as a student with a disability under the disability classification of “Other Health Impairment” as defined in 14 DE Admin Code § 925.6.14.
2. Student is also diagnosed with Attention Deficit Hyperactivity Disorder (“AD/HD”) and a medical condition.
3. The School is a public charter school, and serves students in x through x grade in one building, and students in x through x grade in another building.
4. At the Parent’s request, Student’s Relative participates in IEP Team meetings on Parent’s behalf and regularly communicates with the School related to Parent’s concerns and requests.<sup>1</sup>

### **Relevant Facts from the 2015 – 2016 School Year**

5. Student has educational needs in the areas of behavior, social skills, and self-regulation. Through his/her IEP, Student is placed in a general education classroom and provided support for behavior goals through consultation, accommodations, and direct services.
6. At Parent’s request, the School contracted with a private Autism Resource Center Behavior Consultant (“BC”) in the spring of 2016 to assist with programming for Student’s behavioral needs. BC directly observed Student in the school setting on several occasions, and provided consultation to the teachers working with Student.
7. In March 2016, Student had a total of 3 ¾ days of suspensions for aggressive behaviors, including kicking another student, throwing books at students and staff, and swinging at school staff. On March 16, 2016, the crisis response team reported to the School as a result of Student’s aggression.
8. In March 2016, the BC completed a Functional Behavior Assessment (“FBA”) due to concerns with Student’s aggression, destructive behaviors, use of unkind words, and

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<sup>1</sup> In some instances, the findings of fact refer to Parent and Relative interchangeably as Relative’s communication with the School on Parent’s behalf is extensive.

verbal protests. The BC reviewed educational records, and conducted interviews with Parent, Relative, Director of the School, and Student's teacher. The BC also reviewed data provided by the School, functional assessment checklists completed by the teachers and staff, as well as direct observation of Student and data collection. Some revisions were made to the FBA in May 2016.

9. The FBA concluded Student is likely to engage in aggressive behaviors, verbal protests, and use unkind words in various settings in order to gain attention, gain access to a tangible or activity, and/or to escape. The FBA identified antecedents to Student's behaviors as provocation by peers, demands placed on Student, and denial of Student's requests.
10. In April 2016, the BC developed a Behavior Intervention Plan ("BIP") for Student based on the FBA, its conclusions, and the data collected. The BIP identified Student's target behaviors, and included prevention strategies for reducing Student's target behaviors, as well as replacement behaviors, and strategies to reinforce Student's positive behaviors. Some revisions were made to the BIP in May 2016.
11. In May 2016, the BC also developed a Crisis Plan for Student to be implemented only if: (1) Student's behaviors pose imminent danger or serious physical harm to Student or others; or (2) disruption to the classroom occurs for more than 15 minutes due to ineffective behavior interventions. The Crisis Plan required IEP Team members to be trained in non-violent crisis intervention, and lists responsibilities of IEP Team members, including the team leader's duty to perform restraints. The Crisis Plan states physical restraints may be warranted if Student is in imminent danger of hurting self or others and BIP interventions have failed.
12. On May 19, 2016, the School sent written notice of a June 1, 2016 IEP Team meeting to Parent. Parent signed a waiver of his/her right to receive 10 school days prior notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0.
13. On June 1, 2016, an IEP Team meeting was held to develop, review, and revise Student's IEP. Parent participated in the IEP Team meeting, and provided input into the revision of Student's IEP.
14. The BC also attended the June 1, 2016 IEP Team meeting and assisted the IEP Team in the development and revision of Student's IEP goals and BIP. The IEP Team developed a BIP for Student based on the BC's guidance and suggestions.
15. The June 1, 2016 IEP describes Student's educational needs in the areas of behavior, social skills, and self-regulation. The IEP states Student struggles with periods of dysregulation, emotional volatility, and physical and emotional outbursts. Student's BIP provides Student with behavior support, as well as the accommodations in his/her IEP, to include:
  - (a) Access to sensory activities during periods of transitions and unstructured time;

- (b) Discussion with Student about transitions or changes in schedule in advance;
  - (c) Access to a quiet place in the classroom to regroup or get away from stressful situations;
  - (d) Approach Student in a positive manner when an unpleasant topic needs discussion;
  - (e) Provision of a seating place away from those who annoy Student;
  - (f) Acknowledgement of Student's appropriate attempts to enter discussions;
  - (g) Provision of a choice between two options, when possible;
  - (h) Use of prompting cards as a silent signal to exhibit appropriate behaviors; and
  - (i) Provision of down time at the complaint of an academic task.
16. The June 1, 2016 IEP includes four annual goals focused on: (1) limiting provocative behaviors and inappropriate words; (2) responding with socially acceptable behavior when provoked; (3) compliance with requests or denial of requests; and, (4) leaving the classroom without further incident. The IEP Team concluded Student requires positive behavior interventions, supports and strategies that promote learning in order to receive FAPE.
17. The June 1, 2016 IEP describes Student's need for support related to Medical Condition causing Student to experience periods of fatigue, loss of balance, and weakness in his/her core and extremities. The IEP states Student requires a quiet rest area in the classroom, close monitoring of his/her movement in the classroom, stairs, and hallways, access to an elevator during periods of leg weakness, and writing assignments abbreviated to meet physical limitations.
18. The June 1, 2016 IEP also identifies Student's need for accommodations and supports related to AD/HD. The IEP describes accommodations necessary to reduce Student's distractibility and increase attention to academic tasks and instruction, to include preferential seating, frequent check-ins, and chunking of long assignments, and pre-writing activities.
19. The IEP states Student's educational needs can be met in the general education setting with special education support, and the accommodations and services outlined in the IEP and BIP.
20. The IEP Team determined Student did not require extended school year services for the summer of 2016. Sufficient data was presented and reviewed at the meeting to support the decision.

21. On June 2, 2016, the School sent Prior Written Notice (“PWN”) to Parent by E-mail and sent home with Student. The PWN contained the information required by 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0.
22. On June 3, 2016, Relative sent an Email to Special Education Teacher noting what Relative believed were discrepancies between the PWN and the decisions made at the June 1, 2016 IEP Team meeting.
23. In response to Parent’s concerns, the School sent a revised PWN to Parent on June 6, 2016. The revised PWN reflected the decisions made at the June 1, 2016 IEP Team meeting, as follows:
  - (a) A prompting card would be added and used to assist with Student’s behavior, as recommended by the BC.
  - (b) Student’s self-regulation goal was revised, and an annual goal for task completion was removed because it was no longer necessary.
  - (c) Student would receive a writing assessment in the fall of 2016 to evaluate Student’s writing skills and any regression.
  - (d) Student was discharged from occupational therapy service based on the results of an occupational therapy evaluation concluding Student no longer required it to access the general education curriculum for hand writing, scissor use, or for behavior/sensory issues.
  - (e) Student’s prior IEP goal for appropriate identification of feelings and emotions was discontinued as Student mastered the goal on May 22, 2016. Student had been receiving direct psychological services in the self-regulation program to identify level of emotions and strategies to cope with feelings. Because Student mastered the goal as of May 22, 2016, Student will no longer require direct counseling services from the School Psychologist.
  - (f) The School Psychologist will no longer meet and consult with Student’s teachers on a monthly basis. Rather, a Student Support Specialist (“the Specialist”) would be assigned to Student.
  - (g) The Specialist will meet with Student’s teacher monthly to support the implementation of Student’s BIP. The Specialist will also meet with Student weekly in a small group social skills program to address Student’s social skills needs and behavioral goals.
  - (h) The School Psychologist will consult with the Specialist regarding Student once a week in September, twice during October and November, and once a month for the duration of Student’s IEP. Student’s teacher will join the meetings monthly.

24. Parent expressed concern about the Specialist's credentials and ability to effectively support Student and his/her social and emotional skills. Parent was reluctant to agree to the use of the Specialist, and preferred the School Psychologist or the BC to support Student. The School felt the Specialist was qualified to assist Student with social and emotional skills, and was available for direct support with Student on a daily basis in the school setting, whereas the BC and the School Psychologist who were not full time faculty.
25. On June 8, 2016, Parent sent an E-mail to the Special Education Teacher repeating Parent's concerns about the Specialist's qualifications to work with Student. Parent requested information about the Specialist's qualifications prior to the start of the school year, and noted the request was not mentioned in the June 6, 2016 PWN.
26. The June 1, 2016 IEP has an end date of January 26, 2017.
27. Throughout the 2015-2016 school year, the School Psychologist collected and reported behavioral data to Parent and Student's IEP Team. Parent received behavioral data from the School Psychologist regularly during the 2015-2016 school year in a format that was clear, understood, and aligned with IEP goals.

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

28. In August, 2016, the Specialist began full time employment with the School.
29. Student's first session with the Specialist was September 12, 2016. The social skills group sessions are documented, and the data is sent home with Student.
30. The Specialist collected and reported behavioral data to Parent and Student's IEP Team during the 2016-2017 school year. Parent alleges the behavioral data for 2016-2017 is not clear, nor is it provided regularly.
31. On September 20, 2016, Relative sent an E-mail to the School staff again requesting the Specialist's qualifications to address Student's social skill needs.
32. On September 23, 2016, the Principal sent an E-mail to Relative with a description of Specialist's credentials, certifications, and work experience. The Principal reported the information could not be shared until the Specialist was on contract with the School and personnel issues were finalized.
33. Parent requested an IEP Team meeting to discuss Student's behavior, psychological services, and Student's progress. Parent remained concerned with the Specialist placed in the role of supporting Student's social and emotional needs.

34. On September 23, 2016, the School sent written notice of a September 28, 2016 IEP Team Meeting. Parent signed a waiver of the right to receive 10 school days prior notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0.
35. On September 28, 2016, the IEP Team convened and reviewed Student's program, progress, and services. The IEP team discussed Parent's concerns, but made no revisions to Student's IEP.
36. On September 30, 2016, the School sent PWN to Parent confirming no revisions were made to Student's IEP. Per the PWN, the IEP Team reviewed Student's BIP, services from the School Psychologist and Specialist, behavior and social skills data, current levels of academic performance, and use of the WIAT subtest as part of Student's writing assessment. The PWN states the IEP Team will reconvene when Student's writing assessment was completed.
37. Parent alleges the School agreed to provide an OT consultation in September 2016. The School denies it agreed to an OT consultation in September 2016. In addition, the PWN does not reflect OT consultation as a service or topic of discussion at the September 28, 2016 IEP Team meeting.
38. On October 24, 2016, Student's writing assessment was completed by the School Psychologist.
39. On October 25 and November 4, 2016, the School sent E-mails to Parent advising an IEP Team meeting would be scheduled for November 9, 2016 to review the results of Student's writing assessment.
40. On November 8, 2016, the School sent Parent written notice of the November 9, 2016 IEP Team meeting. While the notice contained the information required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0, it was not provided to Parent 10 school days prior to the IEP Team meeting.
41. On November 9, 2016, the IEP Team convened and reviewed Student's writing assessment to determine Student's strengths and needs in writing, and to determine if any revisions were needed to his/her IEP.
42. The writing assessment found Student's writing skills to fall within the lower end of the average range, and Student's writing needs were in the areas of mechanics, sentence structure, and productivity.
43. On November 14, 2016, the School sent PWN to Parent, stating:
  - (a) The current writing assessment was compared to prior assessments, and the data shows Student is making consistent gains in writing.

- (b) Student is showing growth in writing stamina in the classroom, desire to write, spell, and use writing mechanics.
  - (c) Student's IEP will not be revised to add supports, benchmarks, or a goal because Student is making progress in his/her writing skills.
  - (d) Student will participate in response to intervention ("RTI") for writing and his/her progress will be monitored. The RTI plan will be sent to Parent and Relative.
  - (e) Student's writing skills will be re-evaluated in about six months.
  - (f) Antecodal data was reviewed concerning Student's behaviors.
  - (g) Relative requested specific behavioral data be compiled and produced to Student's parents, and the School agreed to provide it.
44. On November 26, 2016, Relative sent an Email to the School noting what Relative believed were discrepancies between the PWN and decisions made at the November 14, 2016 IEP Team meeting. According to the E-mail, Parent preferred to have a writing goal added to the IEP, but when IEP Team denied the request, Parent conceded. Relative and Parent had no recollection that antecodal behavior data was discussed. Parent did not agree to wait six months to re-evaluate Student's writing skills.
  45. On November 29, 2016, the Specialist sent data graphs related to IEP behavior goals to Parent. However, the data was not collected or reported in the same manner as the 2015-2016 school year, and was difficult to understand and align with Student's BIP and IEP goals.
  46. On December 31, 2016, the Educational Diagnostician ("ED") E-mailed Parent to request dates of availability to schedule Student's annual IEP review meeting because the IEP had an impending end date of January 26, 2017. Parent responded they were not available until February 2017.
  47. On January 25, 2017, the School sent Parent written notice of a January 26, 2017 IEP Team meeting. While the notice contained the information required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0, it was not provided to Parent 10 school days prior to the IEP Team meeting.
  48. On January 26, 2017, the IEP Team convened and extended the end date of Student's IEP to February 28, 2017. The School also sent PWN on January 26, 2017 confirming the extension of Student's IEP and no other revisions.
  49. On January 27, 2017, Student was suspended three days out of school for aggression.
  50. Parent became increasingly concerned Student's behaviors were escalating, and his/her IEP and BIP were not meeting his/her needs.

51. In February, 2017, the ED sent E-mails to Parent to request availability to schedule an IEP Team meeting prior to the IEP end date of February 28, 2017. The ED pointed out the importance of convening the IEP Team to review and revise Student's IEP as soon as possible. In response, Parent requested the IEP Team meeting be scheduled in later March to allow Parent time to obtain information from private service providers and address some insurance barriers Student was experiencing.
52. On February 28, 2017, the School and Parent agreed by telephone to schedule Student's annual IEP Team meeting for March 20, 2017 to review and revise the IEP.
53. On February 28, 2017, the ED sent Parent written notice of the March 20, 2017 IEP Team meeting. The written notice was provided in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0.
54. On March 13, 2017, the ED sent an E-mail to Parent and Relative with the draft IEP, the draft BIP, the February 2017 writing evaluation, the notice of meeting, and a proposed agenda for the March 20, 2017 meeting.
55. On March 20, 2017, the IEP Team meeting was held to develop, review, and revise Student's IEP.
56. The initiation date of the IEP is March 30, 2017 through March 19, 2018. The end date was later revised to April 23, 2018.
57. The March 30, 2017 IEP describes Student's educational needs in the areas of behavior and emotional regulation, social interaction, flexibility and impulsivity during transitions. The IEP states Student requires numerous accommodations, including a BIP, direct instruction for social skills, a point card reinforcement system, and a check in person to support his/her difficulties in managing emotions and behaviors, teaching flexibility, managing impulsivity, and developing social interactions.
58. The March 30, 2017 IEP describes Student's difficulties with executive functioning affecting his/her social interaction with others, and ability to adapt to schedule changes, and develop higher level social skills, relationships with others, and self-awareness.
60. Progress reports from Student's prior IEP were reviewed and the data reflected:
  - (a) Student had not mastered three of his/her prior IEP goals (i.e., limiting provocative behaviors and inappropriate words, compliance with requests or denial of requests, and leaving the classroom without incident)
  - (b) Student had mastered one prior IEP goal (i.e., responding with socially acceptable behavior when provoked)

61. IEP goals were revised in the March 30, 2017 IEP, but were similar to the unmet goals in the prior IEP, focusing on: (a) reducing incidences of behavior escalation when Student needs to leave the classroom; (b) increasing appropriate self-reflection in social scenarios; (c) limiting the use of inappropriate words during classroom transitions.
62. On April 5, 2017, the School sent PWN to Parent, stating:
  - (a) Student's present levels of performance and progress, Student's writing evaluation and RTI data, the implementation of the BIP, and data considerations within the IEP were reviewed at the March 20, 2017 IEP Team meeting.
  - (b) Student's recent writing assessment dated February 8, 15, and 17, 2017 was reviewed, and the results indicate Student's writing skills were in the average range.
  - (c) Student does not require special education services for writing skills.
  - (d) Progress data was reviewed showing Student meets grade level benchmarks in reading and math. RTI data was also reviewed and showed improvement.
  - (e) Behavior data was reviewed, the use of reinforcers, and Student's progress with behavior.
  - (f) Student's BIP was revised, to address specific behaviors to be monitored and revisions to accommodations and transition supports.
  - (g) Parent expressed concern Student's BIP is not comprehensive enough, and requested the BC be involved in the next IEP Team meeting.
63. Parent alleges the April 5, 2017 PWN was not accurate, and Parent actually requested the BC be involved in future programming and services to Student.
64. In March 2017, Parent requested data from the School to show the time Student spends in and out of the classroom due to behavior, and it was not provided until June 2017.
65. On March 24, 2017, the Special Education Teacher sent an E-mail to Parent asking if Parent could attend an IEP Team meeting on April 24, 2017 as a continuation of the March 20, 2017 IEP Team meeting.
66. On March 27, 2017, Parent responded by E-mail and stated his/her availability to attend to April 24, 2017 as the next IEP Team meeting.

67. On April 3, 2017, the School sent Parent written notice of the April 24, 2017 IEP Team meeting. While the notice contained the information required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0, it was not provided to Parent ten (10) school days prior to the IEP Team meeting. Due to school closures on April 12 through April 23, 2017 per the School's calendar, Parent did not receive the full ten (10) school days notice.
68. On April 18, 2017, Relative sent an E-mail to the Special Education teacher requesting a copy of the documents in preparation for the April 24, 2017 IEP Team meeting. The same day, the School responded by E-mail and sent to Relative the notice of meeting and the BIP.
69. On April 24, 2017, the IEP Team convened as a continuation of the March 20, 2017 IEP Team meeting.
70. Per the PWN dated April 24, 2017,
  - (a) The IEP Team reviewed a March 2, 2017 letter and report provided by Parent from Doctor at the x Clinic of the Children's Hospital of Philadelphia ("CHOP"). Doctor recommends Student receive physical and occupational therapy as medically necessary to facilitate his/her needs in school and educational participation.
  - (b) The School proposed to obtain permission from Parent to share the letter and report from CHOP with the School's occupational ("OT") and physical therapists ("PT") for review, and then reconvene to determine next steps.
  - (c) Student's IEP and behavior interventions were reviewed, as well as the format of the reported behavioral data.
  - (d) The School contacted the BC to attend the IEP meeting, but no response was received.
  - (e) Parent requested a revision to the present level of educational performance ("PLEP") in the first goal of Student's IEP related to a reduction in the number of escalations. The School denied the request on the basis the PLEPs are revised at the annual IEP review and the PLEPS were written from previously collected data.
  - (f) Parent also requested revision to the first goal of Student's IEP (i.e., reduction of behavior escalations). After the April 24, 2017 IEP Team meeting, Parent sent an E-mail to the ED on April 26, 2017 with proposed goal revisions. After receiving Parent's suggested goal revisions, the School agreed to discontinue the first and third goals in Student's IEP (i.e., reduction of behavior escalations, and limiting inappropriate words).

- (g) Two new goals were added to Student's IEP focused on: (1) accepting coping or calming strategies, and (2) positive communication and interactions during transitions.
  - (h) Student was found not eligible for extended school year services, specialized transportation, or reading based extended school year services.
  - (i) The initiation date of the IEP remained March 30, 2017, but the end date was revised to April 23, 2018.
71. Concerning the attendance of the BC at the April 24, 2017 IEP meeting, the ED reported the School reached out to the BC, but did not receive a response. The ED called and E-mailed the BC, but the BC never responded. A March 31, 2017 E-mail from the ED to the BC confirmed these efforts.
72. At the April 24, 2017 IEP Team meeting, the School agreed to provide specific behavior data graphs to Parent to align with IEP behavior goals.
73. On May 5, 2017, the Specialist sent data graphs to Parent as requested. However, the data graphs are confusing and do not clearly align with the IEP behavior goals. The graphs do not represent reliable data collection and analysis.
74. On May 5, 2017, the ED E-mailed to Parent the PWN, the revised IEP with IEP goal revisions, and the Consent to Evaluate to permit the School's OT and PT to review the March 2, 2017 letter and report from CHOP, and for "records review and observations".
75. On May 6, 2017, Relative sent an E-mail to the ED stating that OT and PT evaluations were not listed on Consent to Evaluate, therefore Parent did not sign it.
76. On May 15, 2017, the School revised the Consent to Evaluate and resent it to Parent noting consent was sought for an evaluation of perceptual and motor skills. On the same date, the School sent PWN to Parent proposing to evaluate Student to determine the need for occupational and physical therapy.
77. Parent signed and returned the Consent to Evaluate for OT and PT.
78. On May 23, 2017, the School's Occupational Therapist completed an evaluation of Student, and concluded Student did not require occupational therapy in the school setting to access and make progress in the general education curriculum.
79. On May 31, 2017, the School's Physical Therapist completed an evaluation of Student and similarly concluded Student did not require occupational therapy as a related service.
80. On May 31, 2017, Relative sent an E-mail to the School requesting the OT and PT evaluations prior to the June 5, 2017 IEP Team meeting.

81. On June 2, 2017, the Specialist E-mailed the OT evaluation to Parent. The PT evaluation was still being written and finalized.
82. On May 22, 2017, Parent and School agreed through E-mail to schedule the next IEP Team meeting for June 5, 2017.
83. On May 31 and June 2, 2017, the School sent Parent written notice of the June 5, 2017 IEP Team Meeting. While the notice contained the information required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0, it was not provided to Parent 10 school days prior to the IEP Team meeting.
84. On June 5, 2017, an IEP Team meeting was convened to determine Student's eligibility for OT and PT, and develop, review and revise Student's IEP, if warranted.
85. Per the PWN dated June 11, 2017,
  - (a) The School agreed to provide Parent with consultation summaries from the School Psychologist once a month at the start of the 2017-2018 school year.
  - (b) Parent requested the social skills instruction be taught by a clinician or psychologist when Student transitions to the x grade next year. The School agreed the social skills instruction would be provided by the Special Education teacher on an individual basis.
  - (c) Student' IEP goals were revised by providing "individual" to the direct instruction of social skills, and, re-wording goals and benchmarks to reflect changes in Student's situation, behavior and expectations.
  - (d) The IEP Team reviewed the OT and PT evaluations. Student is not eligible for OT and PT. Student's performance in the assessed areas are not limiting Student's ability to function and learn in the school environment.
  - (e) Parent disagreed, and expressed concern the eligibility decision was based solely on test results. However, the OT evaluation includes Teacher and Parent completed Sensory Processing Measure rating scales, clinical observations and the Beery-Buktenica Development Test of Visual-Motor.
  - (f) The OT evaluation also includes the School Function assessment completed by the PT and classroom teacher, the Bruininks Oseretsky Test of Motor Proficiency-2, and clinical observations.
  - (g) Data graphs were reviewed by the Special Education Teacher to explain the basis for finding Student not eligible for ESY services over the summer of 2017.

86. At the June 5, 2017 IEP Team meeting, the team discussed eligibility factors related to regression/recoupment, breakthrough, degree of impairment, and extenuating circumstances and data related to Student's current areas of need and ESY. The IEP Team concluded the data did not support Student's eligibility for ESY.
87. The Specialist reported the IEP Team investigated all five areas of ESY eligibility and that Student did not meet criteria in any area.
88. The Education Director confirmed that Specialist presented ESY data sheets at June 5, 2017 IEP Team meeting.
89. Parent alleges no data was presented regarding ESY eligibility at the June 5, 2017 IEP Team meeting, and that data to support ineligibility was presented after the meeting.
90. Relative requested OT services should be provided at the beginning of the 2017-2018 school year because of the transition into a new grade and a new building.
91. Principal reported that OT consultation was written into the 2017-2018 IEP. However, a review of the June 5, 2017 IEP did not include OT listed as a related service. OT is also not listed in the PWN.
92. A review of data graphs noted that Student's provocative behaviors and inappropriate words, compliance prompts, socially appropriate prompts, and escalation were measured over the Thanksgiving and winter breaks 2016. Escalation data was measured over spring break 2017.
93. At the June 5, 2017 IEP meeting, the Specialist reported that data sheets, tied to IEP goals, were shared with Parent.
94. Parent alleges that for the 2017-2018 school year transition, Student would receive social skills training from the special education teacher with assistance provided by the Specialist. The June 5, 2017 IEP Team revised this decision by determining the current provider of social skills instruction (the Specialist) would continue to provide instruction until the end of the current IEP.
95. Progress reports dated June 7, 2017 note Student made satisfactory progress toward three out of four of his/her IEP goals (i.e., use of calming strategies, identification of others' feelings, and limiting inappropriate words). As of May 14, 2017, Student mastered the fourth goal related to use of appropriate communication during classroom transition.
96. Student was suspended five (5) day during the 2016-2017 school year.

## CONCLUSIONS

### **A. *Written and Timely Notice of IEP Team Meetings***

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. To ensure adequate parent participation, schools must provide notice at least ten (10) school days prior to an IEP Team meeting, and describe in a written notice the purpose, time, and location of the meeting, and who will be in attendance. *See*, 34 C.F.R. § 300.322(b)(1); 14 DE Admin Code § 925.22.1.

In this case, Parent claims the School failed to provide proper and timely notice of IEP Team meetings. There were six (6) IEP Team meetings held in the 2016-2017 school year. For each meeting, it is apparent the School staff worked diligently to accommodate the family's schedule and arrange mutually agreeable dates and times for IEP Team meetings. In addition, Parent attended and participated at every IEP Team meeting. However, the IDEA and implementing regulations require the written notice to contain all the required provisions and be provided ten (10) school days in advance. Thus, an informal communication between Parent and the School mutually agreeing on a date and time does not meet the notice requirement. There were four (4) IEP Team meetings in 2016-2017 that were not fully compliant with the notice provisions:

On November 8, 2016, the School sent Parent written notice of the November 9, 2016 IEP Team meeting. On January 25, 2017, the School sent Parent written notice of the January 26, 2017 IEP Team meeting. On May 31 and June 2, 2017, the School sent Parent written notice of the June 5, 2017 IEP Team meeting. While the notices contained the information required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22, the written notices for these meetings were not provided to Parent ten (10) school days prior to the IEP Team meeting.

Similarly, on April 3, 2017, the School sent Parent written notice of the April 24, 2017 IEP Team meeting. While the notice contained the information required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22, the notice was not provided to Parent ten (10) school days prior to the IEP Team meeting. Due to school closures on April 12 through April 23, 2017, Parent did not receive the full 10 school days notice. ***For the reasons stated, I find a violation of Part B of the IDEA and state and federal regulations related to the provision of written and timely notice of IEP Team meetings.***

### **B. *Provision of Prior Written Notice***

Prior written notice must be provided to the parents of a child with a disability ten (10) school days before the school proposes, or refuses to, initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. The notice must include: (1) a description of the action proposed or refused by the school; (2) an explanation of why the school proposes or refuses to take the action; (3) a description of each evaluation, procedure, assessment, record, or report the school used as a basis for the proposed or refused action; (4) a statement the parents of the child with a disability have the protections of the procedural safeguards

under Part B; (5) sources for parents to contact to obtain assistance in understanding the procedural safeguards; (6) a description of other options the IEP Team considered and the reasons why those options were rejected; and (7) a description of other factors that are relevant to the school's proposal or refusal. *See*, 34 C.F.R. § 300.503(a); 14 DE Admin Code § 926.3.0.

In this case, Parent alleges the denial of prior written notice and contends the prior written notices sent by the School did not contain all of the Parent's concerns covered at IEP Team meetings. It is apparent there were lengthy discussion at Student's IEP Team meetings, and the School responded to Parent's requests to amend or revise the PWNs. Some of the PWNs issued by the School inadvertently omit parental concerns raised. The School would benefit from professional development in the area of prior written notice to improve practices and how to clearly document the School's proposed or refused actions in PWN when parental concerns are raised. ***For the reasons stated, I find a violation of Part B of the IDEA and state and federal regulations related to the provision of prior written notice.***

### ***C. Parent Participation in Program and Placement Decisions***

As mentioned, 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 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(b)(1); 14 DE Admin Code § 926.1.3. Decisions involving identification, evaluation, educational placement, and the provision of FAPE to the child are made an IEP Team meeting.

In this case, Parent claims decisions were unilaterally made by the School related to Student's program and services. I find no evidence to support Parent's claim. To the contrary, the School worked constructively to involve Parent in the decisions involving Student's program and services. In addition, an IEP Team meeting is not required for informal or unscheduled conversations involving the School's staff on issues such as teaching methodology, lesson plans or coordination of service provision. An IEP Team meeting is also not required for preparatory activities by the School to develop a proposal or response to a parent proposal that may be discussed later an IEP Team meeting. *See*, 34 C.F.R. § 300.501(b)(3); 14 DE Admin Code § 926.1.3.2. ***For the reasons stated, I find no violation of Part B of the IDEA and state and federal regulations related to parent participation in program and placement decisions.***

### ***D. Student's Eligibility for Extended School Year Services***

A school 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. Specific factors must be considered by the IEP Team in making a decision that, without extended school year services, the child would not receive FAPE during the regular school year. 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.

Parent alleges the School's ESY data is not clear, and fails to demonstrate reliable baseline data on Student's IEP goals. Parent also questions the validity of the data graphs for school break periods, and contends Student requires ESY. However, I find no support for Parent's claim. At the June 5, 2017 IEP Team meeting, the IEP Team thoroughly discussed the eligibility factors related to regression/recoupment, breakthrough, degree of impairment, and extenuating circumstances. The data does not support Student's eligibility for ESY. The Specialist and Education Director confirmed all areas of ESY eligibility were investigated and Student did not meet criteria in any area. ***For the reasons stated, I find no violation of Part B of the IDEA and state and federal regulations related to the provision of extended school year services.***

***E. Provision of Occupational and Physical Therapy to Student***

State and federal regulations implementing the IDEA require an IEP to include a "statement of special education and related services,...based on peer-reviewed research. *See*, 34 C.F.R. § 300.320(a)(4); 14 DE Admin Code § 925.20.1.4. "Related Services" are defined as "supportive services... to assist a child...to benefit from special education." *See*, 34 C.F.R. § 300.34; 14 DE Admin Code § 922.30. Occupational and physical therapy are considered related services under the IDEA.

In this case, Parent claims Student requires OT and PT services due to his/her medical diagnosis and its educational impact. Parent presented a March 2, 2017 letter and report from CHOP recommending Student required physical and occupational therapy as a medical necessity to facilitate his/her needs in school and educational participation. At the April 24, 2017 IEP Team meeting, the School reviewed and considered CHOP's recommendation, and sought its own evaluation by the School's OT and PT therapists.

The OT and PT conducted a thorough assessment of Student concluding Student's condition is not limiting his/her ability to function and access the general education curriculum. The School relied on sources of peer-reviewed research and concluded that Student was not eligible for OT and PT as related services. ***For these reasons stated, I find no violation of the IDEA or implementing state and federal regulations related to the provision of related services to Student.***

***F. Provision of FAPE to Student During the 2016-2017 School Year***

The IDEA and corresponding Delaware law requires schools to provide FAPE 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. FAPE 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's 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;
- (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). 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.

In the complaint, Parent asserts several allegations to support his/her overall claim Student failed to receive FAPE throughout the 2016-2017 school year. Parent alleges Student failed to make meaningful educational progress, and the School failed to use effective strategies to meet Student's individualized needs. Parent claims the School repeatedly used disciplinary actions, ineffective behavior interventions, and seldom shared data. Parent further alleges the behavioral data collected and reported by the School is not clear or understood.

Student requires appropriate behavior supports and services to meet his/her needs. Student's social, emotional, and behavior needs were addressed in his/her IEP and BIP. There were six (6) IEP Team meetings throughout the 2016-2017 school year. The IEP Team reviewed and revised Student's behavioral goals and benchmarks at several meetings based on data collected and reported by the Specialist. Data was shared on multiple occasions at IEP Team meetings and through IEP progress updates. However, Parent correctly states the data collection and reporting of data is not clear, and does not align in a coherent way with the IEP goals. The IEP Team relied on the data throughout the school year to revise the IEP based on perceived progress, but the data is not reliable. As a result, Student has not received an appropriate program for the 2016-2017 school year enabling Student to make educational progress. The behavior supports in Student's IEP and BIP cannot be effectively revised to respond to Student's needs and performance if the progress data, the collection, analysis, and reporting are not clear and reliable to inform the revisions to the IEP and BIP. A more effective method of collecting, analyzing, and reporting data must be developed and implemented by the School. ***For these reasons, I find a violation of the IDEA and corresponding state and federal regulations regarding the provision of FAPE to Student for the 2016-2017 school year.***

In the complaint, Parent also alleges Student is not adequately supported for his/her social skills needs as the social skills instruction must be provided by the School Psychologist or a qualified clinician. Parent alleges the Specialist is not qualified to address Student's social and emotional needs as outlined his/her IEP. The IDEA and implementing state and federal regulations set forth qualifications to ensure that personnel necessary to carry out the IEP are appropriately and adequately prepared and trained including that those personnel have the content knowledge and skills to serve students. *See*, 34 C.F.R. § 300.156(a). In this case, the Specialist meets the requirements and is trained and qualified to provide support for Student's social and emotional needs and implement Student's IEP. ***For the reasons stated, I find no violation of the IDEA and corresponding state and federal regulations regarding the qualifications of the Specialist to provide the supports in Student's IEP.***

Parent further claims the School failed to consider the feedback and interventions of the BC. To the contrary, Parent requested the School to contract with the BC to conduct an FBA and BIP to assist Student in improving school behaviors, and the School complied. The BC also attended the June 1, 2016 IEP meeting and provided substantial input into the development of Student's behavioral goals and BIP. Prior to the April 24, 2017 IEP meeting, the School also documented its efforts to include the BC in the April 24, 2017 IEP Team, but the BC did not respond. ***For these reasons, I find no violation of the IDEA and corresponding state and federal regulations regarding the involvement of the BC in Student's program.***

#### ***G. Annual Review of Student's IEP***

State and federal regulations require an IEP to be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. *See*, 34 C.F.R. § 300.324.(6)(b)(i); 14 DE Admin Code §925.24.7. In this case, Student's IEP had an end date of February 28, 2017, and was not documented as re-initiated until March 30, 2017. ***For these reasons, I find a violation of the IDEA and corresponding state and federal regulations relating to the annual review of IEPs.***

### **CORRECTIVE ACTION PLAN**

To address the regulatory violation noted in this Decision, the DDOE directs the School to take the following corrective actions;

#### **Student Level Corrective Actions**

1. The School shall schedule an IEP meeting prior to **September 29, 2017**, with Notice of Meeting, required content, and Prior Written Notice.
  - a. Data related to Student's progress on behavior goals should be presented and discussed at the IEP meeting.
  - b. School shall develop a means of collecting and reporting data to Parent that is measurable and easy to understand. This data should be sent to Parent on a monthly basis as stated in the June 5, 2016 IEP.

- a. On or before **September 29, 2017**, the School shall provide to the Director of Exceptional Children Resources a copy of the Notice of Meeting and Prior Written Notice.
2. Due to the denial of FAPE throughout the entirety of the 2016-2017 school year, compensatory education must be provided to Student by School. School will calculate and submit the number of hours owed to Student based on the number of hours the Student did not receive special education services due to in school suspensions and out of school suspensions. 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 Parent for outside tutoring). This plan must be submitted to Director of the Exceptional Children's Resources on or before **September 29, 2017**.

### School Level Corrective Actions

1. On or before **December 1, 2017**, the School shall review its Prior Written Notice and Notice of Meeting policies, practices, and procedures and revise as necessary to ensure proper parent notification of special education services. As necessary, the School shall develop a written procedure to ensure that parent notification is properly implemented prior to and during the IEP process, and School staff understand the requirement of these regulations. Documentation evidencing completion of this action shall be submitted to the Director of Exceptional Children Resources for the DDOE on or before **December 1, 2017**.
2. On or before **December 1, 2017**, the School shall ensure professional development is provided to all special education staff in the School, regarding parent notification, BIP data collection, and reporting IEP progress towards annual goals. The professional development shall address the compliance issues identified in this Decision, and include the following subjects:
  - a) Requirement of Notice of Meeting
  - b) Requirements of the Prior Written Notice
  - c) The collection and reporting of IEP and BIP data, and the process of using data to make decisions and revisions to the IEP and BIP.
  - d) The process of reviewing data and making revisions to the IEP and BIP when sufficient progress is not being made, prior to excluding the child from the classroom setting as a disciplinary removal or out of school suspension.

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 on or before **December 1, 2017**.

Complaint Investigator  
Date: August 24, 2017