

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 18-02 (October 31, 2017)

On September 6, 2017, Parent filed a complaint with the Delaware Department of Education (“the Department”). The complaint alleges the School District (“SD”) 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, staff correspondence, and documentation provided by Parent and District. Interviews were conducted with Parent and District staff.

COMPLAINT ALLEGATIONS

Parent alleges the SD violated Part B of the IDEA by changing Student’s educational placement without Parent’s consent.

FINDINGS OF FACT

1. Student is x (x) years of age and currently attends the x grade. Student currently receives special education and related services under the disability category of autism as defined in 14 DE Admin Code § 925.6.6. Student is also diagnosed with Condition and is followed by the Children’s Hospital.
2. Prior to x (x) years of age, Student received early intervention services under Part C of the IDEA through Child Development Watch as a resident of School District 1 (“SD1”).
3. Student was subsequently identified as eligible to receive special education and related services under Part B of the IDEA with an educational classification of autism. Student attended School (“School”) in the SD1 through the County Autism Program.
4. The County Autism Program within the SD1 serves children with moderate to severe disabilities ranging from ages three (3) to twenty-one (21). The County Autism Program is also the x County branch of the Delaware Autism Program.
5. In July 2015, Parent moved from SD1 to SD. However, Student continued to attend School through County Autism Program in the 2016 - 2017 school year.

6. In the interim, SD was developing its own autism program to serve its students with autism within SD. SD was preparing to assign and transition SD eligible students to its autism program. Some of these students include children with autism residing within SD, and attending schools through County Autism Program within SD1.
7. To prepare for the transition of SD students to its autism program, SD entered into a contract with the Consultants (“the Consultants”) on March 27, 2017 to assist SD with planning and staff training for the SD autism program.
8. Consultants conducted six (6) training sessions between March 28, 2017 and August 22, 2017 for twenty-four (24) staff members from School (“School”) and another SD school.
9. In January and February 2017, Consultants also conducted observations of SD students who attended out-of-district programs.
10. The Director reported the Consultants were contracted to observe students in out-of-district programs, gather data, and evaluate the appropriateness of those students transitioning to SD to be served in SD’s autism program. The observed students were in in x grade or below, and not served in special school buildings. SD reviewed the collected data to administratively determine whether the students could be served in the SD’s newly established autism program.
11. As stated, Student is a SD resident, but attended School through the County Autism Program in the SD1 due to its autism program for the 2016 – 2017 school year.
12. On November 11, 2016, SD1 sent written notice of a May 5, 2017 IEP Team meeting to Parent. The purpose of the meeting was to determine Student’s continued eligibility for special education and related services and to conduct an annual review of Student’s IEP.
13. On February 13, 2017, SD1 sent a written notice of a March 2, 2017 IEP Team meeting to Parent. The purpose of the meeting was to develop, review, and/or revise Student’s IEP.
14. Parent attended the March 2, 2017 IEP Team meeting, in addition to SD’s Director of Special Education, SD1’s school psychologist, SD1’s speech and language pathologist, a general education teacher, a special education teacher, and SD1’s administrator.
15. The March 2, 2017 conference notes and prior written notice state, in relevant part:
 - (a) Parent consented to Student receiving the three year reevaluation.
 - (b) Student’s IEP was revised to address needs in the areas of decoding and listening comprehension.

- (c) With consideration of least restrictive environment factors, the IEP Team determined Student requires an educational placement in separate special education classes, as well as the regular education setting, also known as “the B setting”.
16. The Director reported that, after the March 2, 2017 IEP Team Meeting, Parent was notified that Consultants, in conjunction with SD staff, observed Student as a potential candidate for the SD’s autism program. Parent was advised an information meeting would be scheduled and written notification would be sent.
 17. On April 18, 2017, SD sent over six hundred (600) letters to parents of students with special needs served within SD’s schools, as well as out -of-district programs. The letter notified parents SD’s course of action to enhance programmatic opportunities for students with disabilities would be presented at a May 4, 2017 meeting. The May 4, 2017 presentation was provided by Consultants and the Council for Students with Disabilities.
 18. In anticipation of Student’s May 5, 2017 annual IEP Team meeting, SD1 sent a draft IEP to Parent on April 27, 2017.
 19. Parent attended the May 5, 2017 annual IEP Team meeting, in addition to SD’s administrator, SD1’s school psychologist, SD1’s speech and language pathologist, SD1’s occupational therapist, a general education teacher, a special education teacher, and SD1’s administrator.
 20. Student’s IEP was reviewed and revised at the May 5, 2017 IEP Team meeting. Student’s three year reevaluation was also conducted and documented in the Evaluation Summary Report.
 21. The May 5, 2017 conference notes and prior written notice state, in relevant part:
 - (a) Student continues to meet the eligibility criteria for an educational classification of autism.
 - (b) Student requires an educational placement in the B setting consisting of placement in separate special education classes, and the regular education setting.
 - (c) SD’s representative stated SD has a program in place sufficient to meet Student’s educational needs. Information was shared about SD’s newly established autism program. Parent was invited to tour and learn more about the program.
 - (d) Parent stated his/her disagreement with any plan to move Student to an SD school. Parent stated concerns with lack of staff training and experience, high student to staff ratio, inconvenient school location for Parent, and other transition issues.

22. Student's May 5, 2017 IEP states special education services would be provided in the B setting from September 9, 2017 through May 4, 2018 at School through the County Autism Program within the SD1. Thus, Parent stated agreement with the program and placement outlined in the IEP.
23. On June 23, 2017, however, SD's secretary notified Parent by telephone of a July 13, 2017 information meeting to discuss Student's attendance at School within SD for the 2017 – 2018 school year. Parent responded the change in schools was not acceptable.
24. On July 13, 2017, Parent attended the information meeting with SD staff and Consultant to discuss plans for Student attending School. Consultants and SD staff reviewed the data collected during observations of Student, and explained the specific components of SD's autism program. The Director reported that Parent was not in agreement with Student attending School.
25. On August 1, 2017, SD's Director sent a letter to Parent summarizing the July 13, 2017 meeting and advising Student is scheduled to begin at School on September 5, 2017. An invitation to the August 30, 2017 Open House was included in the letter to Parent.
26. On August 15, 2017, Parent met with SD staff for another information meeting and to answer Parent's questions about the SD autism program. Parent participated in a tour of School.
27. On August 21, 2017, the Principal of School sent a letter to Parent advising of Student's assigned teacher, classroom, and the first day of school. An invitation to the August 30, 2017 Open House to meet the teacher and tour the school was also included in the letter.
28. SD's Special Education Coordinator ("Coordinator") reported Parent was also called and invited to the August 30, 2017 Open House. Parent attended the Open House, but refused to sign a temporary placement agreement for Student. Parent continued to oppose Student's attendance at School.
29. The Open House was held at School on August 30, 2017, and Parent participated in an escorted tour of the building and classrooms.
30. In an August 30, 2017 E-Mail from Parent to Coordinator, Parent requested that signature indicating agreement with the May 5, 2017 IEP be removed.
31. Student began attending School on September 5, 2017. Student receives special education services in a classroom of eight students, grades x through x, with a variety of disabilities. A teacher and two paraprofessionals staff the room, which is a component of SD's autism program.

CONCLUSION

A parent must be included as part of the group of persons who makes the educational placement decision. *See*, 34. C.F.R. § 300.116(a)(1); 14 DE Admin Code § 923.16.1. “Educational placement” means educational program, not the particular institution where the program is implemented. *White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003). In addition, an educational placement is not a physical location, but a program of educational services offered to the student. *Sherri A.D. v. Kirby*, 975 F.2d 193 (5th Cir. 1992).

The educational placement is the child’s IEP, and the school designated by the public agency to implement the child’s IEP is the location of services. While the IDEA requires parental participation in educational placement decisions, it does not mandate that parents be involved with site selection. *White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003). Therefore a change in site location is an administrative decision solely within the discretion of the district provided that the assignment is made consistent with the child’s IEP.

In this case, Parent was part of the IEP Team for both the March 2, 2017 and May 5, 2017 meetings.

In determining whether a change in educational placement has occurred, the public agency responsible for educating the child must determine whether the proposed change would substantially or materially alter the child’s educational program. In making such a determination, the effect of the change in location on the following factors must be examined: (1) whether the educational program set out in the child’s IEP has been revised; (2) whether the child will be able to be educated with non-disabled children to the same extent; (3) whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and (4) whether the new placement option is the same option on the continuum of alternative placement. *Letter to Fisher*, 21 IDELR 992 (1994).

In this case, Parent actively participated in Student’s IEP Team meetings and the group decision to place Student in separate special education classes and the regular education setting, known as the B setting. Subsequent thereto, SD made an administrative decision to reassign Student to School within SD to allow Student to participate in SD’s newly established autism program. SD sought the expertise from Consultants in the development and implementation of its autism program, and offered meaningful opportunities for parents and students to learn about the autism program prior to the start of the 2017 – 2018 school year. SD is also implementing Student’s May 5, 2017 IEP which requires Student to be placed in the B setting. At School, Student is educated with non-disabled peers for science, social studies, and essential arts, and receives speech and occupational therapy services. There was no change to the services required by the Student’s IEP when Student was assigned to School within SD, and Student continues to receive services in the B setting. ***For these reasons stated, I find no violation of the IDEA or implementing state and federal regulations related to the change of educational placement.***

CORRECTIVE ACTION

The Department is required to ensure that corrective actions are taken when violations of the requirements are identified through the complaint investigation process. In this case, no violation of Part B of the IDEA was identified. Therefore, no further action by the Department shall be taken.

By:
Assigned Investigator