

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 18-04 (February 16, 2018)

On November 16, 2017, Parent filed a complaint with the Delaware Department of Education (“DDOE”). The complaint alleges that School District (“District”) 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 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 and District. Interviews were conducted with Parent and District 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 DDOE receives the complaint. *See*, 34 C.F.R. § 300.153(c); 14 DE Admin Code § 923.53.2.4. In this case, the DDOE received the complaint on November 16, 2017. Therefore, the DDOE’s findings address alleged violations from November 16, 2016 to the current.

COMPLAINT ALLEGATIONS

Parent alleges the District failed to provide FAPE to Student in violation of Part B of the IDEA and implementing regulations. Parent alleges specifically:

1. Parent was denied access to Student’s educational records.
2. Parent was denied prior written notice.
3. Parent was denied participation in program and placement decisions related to Student’s Individualized Education Program (“IEP”).
4. The District failed to conduct a manifestation determination prior to Student’s suspensions.
5. Student requires assistive technology in order to receive FAPE.
6. The District failed to provide a timely evaluation of Student’s educational needs.
7. The District failed to provide Student with appropriate specialized transportation.

8. The District failed to provide an appropriate IEP and behavior intervention plan based on Student's needs.
9. Student requires a 1:1 paraprofessional in order to receive FAPE.
10. The District failed to provide occupational, physical, and speech and language therapy services in the manner required by Student's IEP.

FINDINGS OF FACT

1. Student is x years of age and currently attends x grade at School ("the School"). Student receives special education and related services pursuant to the IDEA and 14 Del. C. § 3101 *et seq.* Student is identified as a student with a disability under the disability category of "Autism" as defined in 14 DE Admin Code § 925.6.6.
2. Student is also diagnosed with medical conditions and oppositional defiant disorder.
3. Student attended the x grade program at the School during the 2016 - 2017 school year.
4. Student is eligible to participate in a twelve (12) month program pursuant to 14 Del. C. § 1703(e).
5. Student was approved for school choice and began attending the School during the summer 2017 and x grade for the 2017 - 2018 school year. The summer program was eighteen (18) half days, and x grade is full day programming.

Relevant Facts from the 2016 - 2017 School Year X Grade

6. Student has behaviors that impede learning requiring Student to receive behavioral interventions, supports, and services. Based on eschoolPLUS discipline data, Student exhibited careless and reckless behavior on February 24, 2017, including hitting staff, and noncompliance, resulting in Student's removal from class.
7. On February 24, 2017, the School sent prior written notice to Parent proposing to complete a functional behavior assessment ("FBA") for Student to address Student's problem behaviors and social-emotional concerns. On February 27, 2017, the School received Parent's signed written consent authorizing completion of the FBA.
8. The School scheduled an IEP Team meeting for April 27, 2017, and provided timely written notice of the meeting to Parent. On March 29, 2017, the School sent written notice of the IEP Team meeting to Parent describing the purpose of the meeting to conduct an annual review of Student's IEP, to develop, review, and/or revise Student's IEP, and develop Student's functional behavior assessment ("FBA") and/or behavior intervention

plan (“BIP”). On April 10, 2017, the School sent a second notice of the IEP Team meeting, and on April 25, 2017, a third notice was sent.

9. A Record of Contact Attempts form also reflects Special Education Clerk called Parent on April 26, 2017 to remind Parent of the April 27, 2017 IEP Team meeting. Parent signed a response form confirming his/her ability to attend the April 27, 2017 IEP Team meeting.
10. School staff reported a draft of Student’s IEP was sent to Parent with the written notice of IEP Team meeting, as well as a parent questionnaire. Parent completed the questionnaire (undated) and it was available during the IEP Team meeting.
11. Student’s current IEP was developed at the April 27, 2017 IEP Team meeting.
12. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent also signed in agreement to excuse the physical therapist from attending Student’s IEP team meeting in compliance with 34 C.F.R. § 300.321(2) and 14 DE Admin Code § 925.21.5.
13. Parent attended and participated in the April 27, 2017 IEP Team meeting.
14. Student’s IEP has annual goals focused on letter, number, color and shape recognition, attending skills, name writing, and following directions, as well as goals for articulation, fine motor skills, upper body coordination, and gross motor skills.
15. The IEP describes Student’s educational needs as requiring extra time to complete written assignments, adult supervision during all transitions, an adult in close proximity at all times and when Student enters or departs transportation venues, adult support to keep Student on task and working, help with unpacking and preparing for the day, participation in small groups for learning activities, shorter work times, prompting, redirection, and individualized and small group instruction. Student further requires hand over hand assistance to complete writing tasks.
16. The FBA was presented and reviewed at the April 27, 2017 IEP Team meeting. The FBA identified Student’s problem behaviors, appropriate behaviors, and proposed replacement behaviors. The IEP Team further reviewed a graphic representation of baseline bus, physical aggression, and defiance data with respect to Student’s behaviors.
17. A BIP was also adopted for Student at the April 27, 2017 IEP Team meeting. The BIP appropriately addresses using environmental supports as intervention strategies, teaching functionally equivalent skills as intervention strategies, and reinforcing target behaviors as intervention strategies.
18. The BIP further contains a crisis plan which details steps for Crisis Prevention Institute (“CPI”) trained staff to manage Student’s physical aggression. The IEP Team determined progress would be monitored through the Individual Behavior Rating Scale Tool and teacher input every marking period.

19. Parent expressed concern about lack of notification when Student engaged in behavioral incidents. In response, the IEP Team revised the IEP to note staff would contact Parent when behavioral incidents occurred.
20. At the April 27, 2017 meeting, the IEP Team concluded Student does not require extended school year services for the summer 2017 as documented in the District's Extended School Year Needs Assessment. The IEP Team notified Parent Student is eligible for twelve (12) month programming pursuant to 14 Del. C. § 1703, and Parent was in agreement with the twelve (12) month program.
21. The IEP Team further concluded Student requires specialized transportation of a small van both to and from school. Student does not need to be placed into the charge of a parent or authorized adult. Student was initially transported on a regular bus during x grade, but the IEP Team determined Student's needs were more intense, and required the support of a van with a smaller number of students.
22. The IEP Team determined Student does not require assistive technology devices in order to receive FAPE. District interviews confirmed that Student did not use assistive technology devices and services in x grade.
23. The IEP Team determined Student's educational needs could be met in a separate special education classroom in an integrated setting, with the special education support, and the accommodations outlined in the IEP and the BIP.
24. The April 27, 2017 meeting minutes reflect Parent shared Student's medical diagnosis with the IEP Team.
25. Parent signed the IEP in agreement with the proposed program and placement. The School also provided Parent with timely prior written notice proposing the IEP. Parent signed the prior written notice acknowledging receipt and waiving the ten (10) school day implementation period with respect to the IEP.
26. The School staff reported that all records and documents are copied and sent home with parents at the conclusion of IEP Team meetings, including the IEP, BIP, FBA, meeting minutes, and prior written notices.
27. With respect to related services, Student's IEP requires Student to receive speech and language therapy services individually four (4) times per marking period for twenty (20) minute sessions during the x grade year, five (5) times per marking period for twenty (20) minute sessions during the summer, and, seven (7) times per marking period for twenty (20) minute sessions during x grade.

28. Speech therapist reported, and the case notes supported, that Student was seen individually for four (4) sessions from April 2017 through June 2, 2017. Student was absent for two (2) sessions. During the summer, Student was seen individually for six (6) sessions. Student was seen individually for twelve (12) sessions from August 31, 2017 to January 9, 2018. Student was absent for six (6) sessions.
29. Student received speech therapy services on Tuesdays and Thursdays. Sessions were twenty (20) minutes in duration.
30. Based on the IEP Progress Report, Student made sufficient progress towards articulation goals as evidenced by quarterly updates for fourth (4th) marking period, summer, first (1st) marking period, and second (2nd) marking period.
31. Student's IEP also requires Student to receive occupational therapy services individually and consultatively four (4) times per marking period for twenty-five (25) minute sessions during the x grade year, five (5) times per marking period for twenty-five (25) minute sessions during the summer, and, seven (7) times per marking period for twenty-five (25) minute sessions during x grade.
32. Occupational therapist reported, and the case notes supported, that Student was seen as a consult on May 15, 2017. During the summer, Student was seen in group or individual therapy for five (5) sessions. Student was seen for ten (10) individual or consultative sessions from August 28, 2017 through December 19, 2017. Student was absent for one (1) session.
33. Student received occupational therapy services on Tuesdays. Sessions were twenty-five (25) minutes in duration.
34. Based on the IEP Progress Report, Student made sufficient progress toward fine motor and upper body coordination goal as evidenced by quarterly updates for the fourth (4th) marking period, summer, first (1st) marking period, and second (2nd) marking period.
35. Student's IEP requires Student to receive physical therapy services in group and consultatively three (3) times per marking period for twenty-five (25) minute sessions during the x grade year, four (4) times per marking period for twenty-five (25) minute sessions during the summer, and seven (7) per marking period for twenty-five (25) minute sessions during x grade.
36. Physical therapist reported, and the case notes supported, that Student was seen in group or individually for two (2) sessions from April 28, 2017 to May 26, 2017. Student was absent for two (2) sessions. During the summer, Student was seen individually for four (4) therapy sessions. Student was seen individually for ten (10) sessions from September 8, 2017 through January 12, 2018. Student was absent for three (3) sessions.
37. Student received physical therapy on Fridays. Sessions were twenty-five (25) minutes in duration.

38. Based on the IEP Progress Report, Student made sufficient progress toward gross motor skills goal as evidenced by quarterly updates for the fourth (4th) marking period and summer. Student mastered the gross motor skills goal by the first (1st) marking period. The goal was later revised, and Student mastered the goal by the second (2nd) marking period.
39. Student's IEP and BIP were implemented by the School staff during the 2016 – 2017 school year.
40. During the 2016 - 2017 school year, Student received a “time out” for disrespect toward a staff member on November 2, 2016, a removal from a class for careless and reckless behavior on February 28, 2017, and an out of school suspension for careless and reckless behavior on May 11, 2017.

**Relevant Facts from 2017-2018 School Year
X Grade**

41. Welcome back to school letters were sent to parents just prior to the School's August 25, 2017 “Meet and Greet” event. The first day of school was August 28, 2017.
42. Parent called the Special Education Clerk to inquire about Student's therapy schedule. On September 25, 2017, the Special Education Coordinator sent an E-mail to the therapists asking them to notify Parent of the schedule, and reported that therapists spoke with Parent.
43. Parent reported to the investigator no one called to notify Parent of Student's therapy schedule. Parent requested that outside agency call the School to obtain the schedule. The Special Education Clerk reported that outside agency contacted the School for the schedule. In turn, Parent was asked to sign a release for outside agency and the Special Education Clerk then sent the related services portion of Student's IEP to outside agency.
44. Parent scheduled Student to begin receiving the required occupational, physical, and speech therapies at outside agency in September 2017.
45. The School scheduled an IEP Team for meeting for August 25, 2017, and provided timely written notice of the meeting to Parent. On August 7, 2017, the School sent written notice of the IEP Team meeting to Parent describing the purpose of the meeting to develop, review, and/or revise the IEP at Parent's request. On August 8, 2017, the School sent a second notice of the IEP Team meeting, and on August 18, 2017, a third notice was sent.
46. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1.
47. Parent attended and participated in the August 25, 2017 IEP Team meeting.

48. Student's IEP was revised at the August 25, 2017 IEP Team meeting, and specific concerns raised by Parent were considered.
49. The August 25, 2017 IEP revision, meeting minutes, and prior written notice state, in relevant part:
- (a) Parent requested a transportation aide for Student and expressed concern with the transportation to and from school. The School declined Parent's request and continued Student's specialized transportation on a van with a small number of students. The Transportation Supervisor reported there were only eleven (11) children on Student's van, a change to a male van driver, and a change of route for the 2017 – 2018 school year. The School reported Student had been successful riding the van over the summer.
 - (b) Parent requested a 1:1 aide for Student based on Parent's concerns with Student's safety in the cafeteria, specials, and recess. The School declined Parent's request because Student had no issues in the cafeteria, sat with the class, and was integrated with one grade level. The School also felt Student was successful academically and behaviorally during the summer program with the smaller student to teacher ratio.
 - (c) However, the IEP Team revised the IEP to add "close adult supervision" for Student during all transitions, including transportation.
 - (d) Parent requested revisions to the FBA and BIP based on Parent's concerns with the content of the documents and the fact that the staff was not adhering to the provisions in the documents. The School declined to revise Student's FBA and BIP on the basis the current strategies, use of a token board, mood regulation, and positive reinforcement, had been very successful for Student during x grade. The School staff reviewed all the coping skills and behavior management techniques that were used with Student.
 - (e) Parent expressed concern Student was not receiving his/her medication at school on a consistent time schedule. The School nurse provided documentation to show consistency with the time and frequency of dosages. The School declined to revise Student's IEP to require the administration of medication to Student.
50. The Special Education Teacher reported that Student's behavior charts are sent home daily to inform Parent of Student's behavior during each school day. Parent is expected to initial and send the charts back. The Special Education Teacher reported Parent typically initialed the charts and returned them to school.
51. The School staff also reported Parent shared Student's medical history and signed a release for the School Nurse to access Student's medical records from Hospital, and disclose information to Hospital.

52. The School provided Parent with timely prior written notice of the decisions made at the August 25, 2017 IEP Team meeting. Parent also signed the prior written notice acknowledging receipt and waiving the ten (10) school day implementation period with respect to the IEP revisions.
53. Based on eschoolPLUS discipline data, Student engaged in inappropriate behavior on September 25, 2017 that included hitting a staff member and classmate resulting in a student teacher conference.
54. Parent expressed concern, and the School scheduled another IEP Team meeting for October 6, 2017. The School sent written notice of the meeting to Parent on September 27 and October 3, 2017. Parent signed a waiver of the right to receive ten (10) school days written notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0.
55. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent also signed in agreement to excuse the physical, occupational, and speech therapists from attending the IEP team meeting pursuant to 34 C.F.R. § 300.321(2) and 14 DE Admin Code § 925.21.5. In addition, the therapies were not discussed at the IEP Team meeting.
56. Parent attended and participated in the October 6, 2017 IEP Team meeting.
57. Student's IEP was revised at the October 6, 2017 IEP Team meeting.
58. The October 6, 2017 IEP revision meeting minutes, and prior written notice state, in relevant part:
 - (a) Parent expressed concern Student was not being successful as Parent felt Student continues to have prolonged behavior episodes.
 - (b) However, the Behavior Interventionist presented longitudinal behavioral data to the IEP Team. The data compared frequency of Student's aggression from January 23 through April 7, 2017 to frequency of aggression from June 21 through September 26, 2017. The data indicated the frequency of Student's physical aggression had decreased by seventy-three percent (73%).
 - (c) Parent requested the addition of a 1:1 paraprofessional because Parent felt Student does not have one specific person to speak with when emotional issues arise. In response, the IEP Team revised Student's IEP to add individual counseling as a related service one (1) time per week for fifteen (15) minutes a session.
 - (d) Parent requested an updated assessment of Student's academic levels and behavioral rating scales. The School agreed to complete the assessments.

59. The School provided Parent with timely prior written notice of the decisions made at the October 6, 2017 IEP Team meeting. Parent also signed the prior written notice acknowledging receipt and waiving the ten (10) school day implementation period with respect to the IEP revisions.
60. The School provided Parent with additional prior written notice on October 9, 2017 proposing to complete Student's updated academic and behavioral assessments and enclosed a consent form. Parent signed the consent form and returned it to the School.
61. Student's behavior and academic assessments were completed by the School Psychologist on October 13 and 16, 2017.
62. Based on eschoolPLUS discipline data, Student grabbed staff on October 13, 2017 resulting in time out, and hit the Assistant Principal on October 17, 2017 resulting in a one (1) day suspension.
63. The Assistant Principal reported Parent was notified of the suspension by a phone call and a copy of the behavioral referral was sent home in Student's daily planner.
64. In addition, the Assistant Principal reported, and the documentation supports, the behavior support reports were completed in triplicate for all behavior infractions that resulted in a staff support call. Copies are sent to parents, teachers, and placed in student discipline files. In this case, copies were sent home to Parent in Student's planner.
65. Further, the School Nurse reported, and the documentation supported, that all office visits and medication administration is entered into eschoolPLUS. The School Nurse reported Parent is called when Student is tardy to confirm Student received the medications. eschoolPLUS information is not shared with parents unless requested, and the School Nurse reports Parent never requested this information. Parent signed release forms allowing the School Nurse to disclose medical information about Student with outside agencies.
66. A Record of Parent Contact Attempts form states Parent was called by the Special Education Clerk on October 19, 2017 to schedule an IEP Team meeting.
67. The School scheduled an IEP Team meeting for October 27, 2017. The purpose of the meeting was to develop, review, and/or revise IEP, and conduct an evaluation or re-evaluation of Student's needs. The School sent written notice of the meeting to Parent on October 19, 2017. Parent then signed a waiver of the right to receive ten (10) school days written notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0.

68. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent also signed in agreement to excuse the physical and speech therapists from attending the IEP team meeting pursuant to 34 C.F.R. § 300.321(2) and 14 DE Admin Code § 925.21.5. In addition, the therapies were not discussed at the IEP Team meeting.
69. Parent attended and participated in the October 27, 2017 IEP Team meeting.
70. No revisions were made to Student's IEP at the October 27, 2017 IEP Team meeting.
71. The October 27, 2017 meeting minutes, and prior written notice state, in relevant part:
 - (a) The IEP Team reviewed the results of the behavioral and academic assessment completed by the School Psychologist on October 13 and 16, 2017.
 - (b) Based on the assessment and discussion, no revisions were made to Student's IEP.
72. The School provided Parent with prior written notice of the decisions made at the October 27, 2017 IEP Team meeting.
73. Based on eschoolPLUS discipline data, Student hit a staff member and classmate on November 13, 2017 resulting in an administrative conference.
74. A Record of Parent Contact Attempts form states the Special Education Clerk called Parent on November 14, 2017 to schedule an IEP Team meeting.
75. The School scheduled an IEP Team meeting for December 6, 2017, and sent written notice of the meeting to Parent on November 14 and December 1, 2017. Parent responded confirming his/her availability to attend the meeting.
76. On December 6, 2017, however, the School received an E-mail from Parent canceling the IEP Team meeting.
77. Based on eSchoolPLUS documentation, Student received eleven (11) counseling sessions occurring between October 11, 2017 and January 8, 2018. The Counselor noted all Student contacts were not recorded.
78. Based on the January 19, 2018 IEP Progress Reports, Student made sufficient progress in all academic areas. IEP goals that were mastered were revised. Special Education Teachers reported that if goals are not met for two benchmarks, then they are revised.

CONCLUSIONS

A. Access to Educational Records Provided.

A school district must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. The district must comply with a request without unnecessary delay and before any meeting regarding an IEP. *See*, 34 C.F.R. § 300.613(a); 14 DE Admin Code § 927.13.1. The right to inspect and review education records under this section includes the right to request that the school district provide copies of the records containing the information. *See*, 34 C.F.R. § 300.613(b)(2); 14 DE Admin Code § 927.13.2.2.

In this case, Parent was provided timely access to Student's educational records. The School staff reported that all records and documents were copied and sent home with Parent at the conclusion of IEP Team meetings, including the IEP, BIP, FBA, meeting minutes, and prior written notices. In addition, the Special Education Teacher reported, and the evidence supports, Student's behavior charts were sent home daily to Parent. The Assistant Principal reported, and the evidence supports, the behavior support reports were completed in triplicate for all behavior infractions that resulted in a staff support call, and copies were sent to Parent in Student's planner. Further, the School Nurse reported, and provided documentation to reflect, that all student office visits and medication administration are entered into eschoolPLUS. However, Parent never requested access to the School Nurse's records, nor did the School deny Parent access to same. **For the reasons stated, I find no violation of the IDEA and corresponding state and federal regulations regarding parental access to educational records.**

B. Prior Written Notice Provided.

Prior written notice must be provided to the parents of a child with a disability no less 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 that 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 was provided timely prior written notices in compliance with state and federal regulations. The School routinely provided Parent with prior written notice on the same dates of IEP Team meetings, or prior thereto. Prior written notices were provided to Parent with the IEP, revisions, and detailed minutes of the IEP Team meeting. The prior written notices provided to Parent further contained the content required by 34 C.F.R. § 300.503(a) and 14 DE Admin code § 926.3.0. **For these reasons, I find no violation of the IDEA and corresponding state and federal regulations regarding the provision of prior written notice.**

C. Parent Participation Afforded In Programming and 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 § 936.1.3. 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 as an IEP Team meeting. 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, there were four (4) IEP Team meetings held on April 27, August 25, October 6, and October 27, 2017. The School provided written notice containing the information required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22 for each IEP Team meeting. In addition, the written notices of IEP Team meetings were timely provided to Parent, or Parent signed a waiver of the right to receive ten (10) school days advance notice of the meeting. The School provided proper and timely written notice of IEP Team meetings to ensure parent participation.

In addition, Parent attended and actively participated at each IEP Team meeting. The School responded to Parent's concerns and scheduled IEP Team meetings to address Parent's specific requests. The School then documented each of Parent's concerns, and the School's responses in IEP revisions, IEP Team meeting minutes and prior written notices. Further, Parent requested school choice for Student, which the District granted, and began with summer programming. Parent indicated agreement with Student's placement for the summer program and x grade services. **For these reasons, I find no violation of the IDEA and corresponding state and federal regulations related to parent participation in special education programming and placement decisions.**

D. Manifestation Determination Not Required.

A school district must hold a manifestation determination within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct. *See*, 34 C.F.R. § 300.530(4)(e); 14 DE Admin Code § 926.30.5. The purpose of the manifestation determination is to decide if the behavioral incident was a manifestation of the child's disability.

In this case, Parent claims Student was denied a manifestation determination prior to suspension from school. However, Student was suspended only one half (1/2) day in the 2016 – 2017 school year and one (1) day in the 2017 - 2018 year. School officials are not required to conduct a manifestation determination prior to imposing a one (1) day suspension in a school year when there is no change in educational placement. ***As a result, I find no violation of the IDEA and***

corresponding state and federal regulations related to the provision of a manifestation determination to Student.

E. Assistive Technology and Equipment Not Required For Student to Receive FAPE.

A school district must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services. On a case by case basis, the use of school purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. *See*, 34 C.F.R. § 300.105; 14 DE Admin Code § 922.3.0.

In this case, Parent claims Student utilized an augmentative communication device during x grade. However, the District staff reported no device or assistive technology were used by Student during x grade or x grade. Parent claims Student requires assistive technology equipment, specifically a helmet and walker, during school, as Parent reports Student uses a helmet and walker at home. During the investigation, the District staff had no knowledge Parent was requesting assistive technology or equipment. Further, the IEP Team made a specific determination Student does not require assistive technology, services, or equipment in order to receive FAPE. Given Student's progress demonstrated by data collected and reported, Student is making educational progress pursuant to the IEP. **Therefore, I find no violation of IDEA or corresponding regulations regarding the provision of assistive technology based on Student's educational needs.**

F. Student Provided a Timely Reevaluation In Response to Parent's Request.

A school district must ensure a reevaluation of each child with a disability is conducted if the school district determines the educational or related service needs, including improved academic achievement and functional performance of the child, warrant a reevaluation; or if the child's parent or teacher requests a reevaluation. *See*, 34 C.F.R. § 300.303(a)(1)-(2); 14 DE Admin Code § 925.3.1.

In this case, Parent requested an updated assessment of Student's academic levels and behavioral rating scales at the October 6, 2017 IEP Team meeting. The District promptly agreed to conduct the assessments and sent Parent prior written notice and a consent form to sign. The School Psychologist completed the assessments on October 13 and 16, 2017, and the data was reviewed and discussed at Student's October 27, 2017 IEP Team meeting resulting in no revisions to Student's IEP. The District responded to Parent's request for a reevaluation in a timely and thorough manner. **Therefore, I find no violation of the IDEA and corresponding state and federal regulations regarding the provision of a timely reevaluation of student's educational needs.**

G. *Appropriate Transportation Provided Based on Student's Needs.*

Transportation is a related service under the IDEA and implementing state and federal regulations if it is required for a child to receive FAPE. In this case, Student was initially transported on a regular school bus during the x grade program, but the IEP Team later determined Student's transportation needs were more intense, and Student required a van with a smaller number of students. When Student's IEP was revised on April 27, 2017, the IEP Team determined specialized transportation on a van was necessary for Student to receive FAPE, and the change in transportation was implemented during the summer programming. Parent alleges Student missed summer programming due to the transition from school bus to van. However, the attendance records for summer programming reflect Student was only absent two (2) non-consecutive days of school. When Parent requested a transportation aide for Student, the School declined Parent's request, but continued Student's specialized transportation on a van with a smaller number of students, a change to a male van driver, and a change of route for the 2017 – 2018 school year. The School reported, and the evidence supports, Student has been successful riding the van over the summer and in the 2017 – 2018 school year. **For the reasons stated, I find no violation of the IDEA and corresponding state and federal regulations regarding the provision of transportation to Student as a related service.**

H. *Student's IEP and BIP Are Appropriate and Based on Student's Unique Needs.*

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 specialty 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 potential.

See, 14 Del. C. § 3101(5).

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 C.F.R. § 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, the IEP Team properly developed Student's IEP based on evaluation and assessment data, teacher observations, and parent input. Student's IEP includes services, supports, and accommodations to meet Student's individual needs. Student receives close adult supervision pursuant to the IEP, and receives instruction in a small classroom setting. The IEP Team revised Student's IEP when necessary, promptly responded to Parent's concerns, and ensured Parent's full participation in program and placement decisions. In addition to academic special education services, Student further received appropriate behavioral supports and services enabling Student to receive FAPE. Based on the recognition of Student's behavioral needs, the District completed an FBA and developed a BIP in preparation for the April 27, 2017 IEP Team meeting. Student's BIP properly focuses on coping with frustration and includes a crisis plan to manage physical aggression. Data was specifically collected by the Behavior Interventionist and reviewed at the April 27, 2017 IEP Team meeting to inform the IEP Team of the appropriateness of the BIP. Behavior was also addressed at the August 25 and October 6, 2017 IEP Team meetings. The Behavior Interventionist presented longitudinal behavioral data at the August 25, 2017 IEP Team meeting. The data demonstrated the frequency of Student's physical aggression had reduced seventy-three (73%) over the prior nine (9) months. At the October 6, 2017 IEP Team meeting, the IEP Team further added individual counseling as a related service for Student in response to Parent's request for Student to have someone to talk to as needed. **For these reasons, I find no violation of the IDEA and corresponding state and federal regulation related to the appropriateness of Student's IEP and BIP.**

I. 1:1 Paraprofessional Support Not Required For Student to Receive FAPE.

A child's IEP Team determines the specific services and supports the child requires to receive FAPE based on the child's unique educational needs pursuant to state and federal regulations.

Student's IEP, developed on April 27, 2017, includes the support of adult supervision for Student during all school transitions. Parent subsequently requested Student receive a 1:1 paraprofessional at the August 25, 2017 IEP Team meeting. The School considered Parent's request, declined it, citing Student's academic and behavioral success during the summer programming with 1:1 support. However, the IEP Team revised the IEP to require Student receive "close adult supervision" during all transitions, including transportation. Parent continues to claim Student requires a 1:1 paraprofessional in order to receive FAPE.

The District staff reported, and the evidence supports, Student is placed in a small classroom setting with a low student to teacher ratio with adequate adult supervision at all times. The x grade, summer and x grade classrooms all had a student to teacher ratio of four (4) to one (1) or less. In addition, Student has made progress academically and behaviorally pursuant to the supports and services in the IEP and BIP. Based on the January 19, 2018 IEP Progress Report, Student made

sufficient progress in all academic goals. **For the reasons stated, I find no violation of the IDEA and corresponding state and federal regulations related to 1:1 paraprofessional support for Student.**

J. Occupational and Physical Therapy Not Provided Consistent with Student's IEP.

State and federal regulations implementing the IDEA require an IEP to include “the anticipated frequency, location, and duration” of related services to be provided to the student. *See*, 34 C.F.R. § 300.320(a)(4); 14 DE Admin Code § 925.20.1.7. In this case, Student clearly requires occupational, physical, and speech therapy services in order to receive FAPE and benefit from specialized instruction.

Student received speech therapy services, and the evidence supports, the speech therapy was provided consistent with Student's IEP.

However, the related service page of Student's April 27, 2017 IEP states occupational therapy would be provided to Student individually and consultatively four (4) times per marking period for twenty-five (25) minute sessions during the x grade year, five (5) times per marking period for twenty-five (25) minute sessions during the summer, and, seven (7) times per marking period for twenty-five (25) minute sessions during x grade. Parent agreed with these services, but the documentation does not demonstrate the District provided occupational services to Student in the manner required by the IEP.

The related service page of Student's April 27, 2017 IEP states physical therapy services would be provided to Student in group and consultatively three (3) times per marking period for twenty-five (25) minute sessions during the x grade year, four (4) times per marking period for twenty-five (25) minute sessions during the summer; and, seven (7) times per marking period for twenty-five (25) minute sessions during x grade. Parent agreed with these services, but the documentation does not demonstrate the District provided physical therapy services to Student in the manner required by the IEP. In addition, the physical therapy goals were added to Student's IEP at the April 27, 2017 IEP Team meeting, but the physical therapist was excused and not in attendance at the meeting. It is uncertain how the physical therapy goals were presented to Parent. **For these reasons, I find a violation of the IDEA and corresponding state and federal regulations regarding the provision of occupational and physical therapy services to Student.**

CORRECTIVE ACTION

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. The District shall calculate the compensatory services for occupational and physical therapies that Student should have received consistently and according to the IEP for the period April 27, 2017 to present. The District and Parent shall agree upon a compensatory

plan and schedule to make up these services. The plan shall specify the number of sessions, length of sessions, and type of sessions to be provided (e.g. individual, group, consultative). The District will submit their calculation of the services owed and the plan for the provision of these services to the Director of Exceptional Children Resources on or before **March 30, 2018**. The District will also provide evidence that the plan was shared with and agreed upon with Parent on or before **March 30, 2018**.

2. On or before **June 29, 2018**, the District shall provide to the Director of Exceptional Children Resources a written update of Student's receipt of occupational and physical therapy required by the IEP, as well as compensatory services required by the compensatory plan that has been provided thus far according to the plan agreed upon by the District and Parent. The written update shall include, but not be limited to, a list of dates and times that therapy was provided, whether it was on an individual, group, or consultative basis, and whether the therapy provided was therapy required by the IEP or therapy required by the compensatory plan, verified progress notes from the therapists, progress reports for Student's IEP goals related to therapy, and any related records. The District shall also provide a copy of the written update to the Parent at the same time it is sent to the Director of Exceptional Children Resources. Any records provided to the Director of Exceptional Children Resources to evidence the provision of occupational and physical therapy services to Student must be verified in writing by the School's administration as an accurate representation and account of services provided.
3. **Upon completion** of the agreed upon plan referenced in #1, the District shall provide the Director of Exceptional Children Resources a written verification of Student's receipt of occupational and physical therapy required by the IEP, as well as compensatory services required by the compensatory plan that was agreed upon by the District and Parent. The written update shall include, but not be limited to, a list of dates and times that therapy was provided, whether it was on an individual, group, or consultative basis, and whether the therapy provided was therapy required by the IEP or therapy required by the compensatory plan, verified progress notes from the therapists, progress reports for Student's IEP goals related to therapy, and any related records. The District shall also provide a copy of the written verification to the Parent at the same time it is sent to the Director of Exceptional Children Resources. Any records provided to the Director of Exceptional Children Resources to evidence the provision of occupational and physical therapy services to Student must be verified in writing by the School's administration as an accurate representation and account of services provided.
4. Since Parent is requesting assistive technology and equipment including a walker, helmet, and augmentative communication device, the District shall conduct a physical therapy evaluation which includes evaluating the need for use of a walker and helmet. The District shall also conduct an assistive technology evaluation to determine if there is a need for an augmentative communication device. Permission to Evaluate and a Prior Written Notice shall be sent to Parent immediately. The District shall then hold an IEP meeting to discuss the results of the evaluations and revise the IEP if necessary. The District shall submit a copy of the Permission to Evaluate, Prior Written Notices, Evaluation Summary Report,

IEP, and evidence that the appropriate professional attended the meeting. These documents shall be provided to the Director of Exceptional Children Resources by **May 31, 2018**.

School Level Corrective Action

1. On or before **April 3, 2018**, the District shall provide a detailed corrective action plan to the Director of Exceptional Children resources to address the regulatory violations identified in this decision.
 - a. The District shall develop a procedure for monitoring and oversight of related service personnel, including those contracted through outside agencies, in the provision of related services to students. An administrative position shall be identified, along with timelines and reliable record keeping, to ensure students are receiving the related services in the manner required by their IEPs and in compliance with regulations. Documentation shall be submitted to the Director of Exceptional Children Resources on or before **March 30, 2018**.
 - b. The District shall further provide professional development to all related service staff, including those contracted with outside agencies, to ensure compliance according to state and federal regulations with providing related services to students in accordance with their IEPs. The professional development shall also include the proper procedure and requirements when excusing a member of the IEP Team from an IEP meeting. A training agenda and any materials, including handouts and PowerPoints, that will be used in the training should be submitted to the Director of Exceptional Children Resources on or before **March 31, 2018**. The training should be completed and copies of training materials, agendas, and attendance rosters should be submitted to the Director of Exceptional Children Resources on or before **June 15, 2018**.

By:
Assigned Investigator