

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 18-05 (February 7, 2018)

On December 13, 2017, Parent filed a complaint with the Delaware Department of Education (“the Department”). 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 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 the District. Interviews were conducted with Parent and District staff.

COMPLAINT ALLEGATIONS

Parent alleges the District violated Part B of the IDEA and implementing regulations by changing Student’s educational placement without Parent’s consent.

FINDINGS OF FACT

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

1. Student is x years of age and is currently attending the x grade at x School (“x 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 “Mild Intellectual Disability” as defined in 14 DE Admin Code § 925.6.12. Student is identified with secondary disability under the category of “Other Health Impairment” as defined in 14 DE Admin Code § 925.6.14.
2. Student is also medically diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”), and other medical conditions.

2016 - 2017 School Year

3. During the 2016 – 2017 school year, Student attended the x grade at y School (“y School”).
4. On March 24, 2017, the District sent written notice of an April 26, 2017 Individualized Education Program (“IEP”) Team meeting to Parent. The purpose of the meeting was to develop, review, and revise Student’s IEP. However, Parent did not attend the IEP Team meeting, and the District did not proceed with the meeting.

5. On April 26, 2017, the District sent written notice of a May 10, 2017 IEP Team meeting to Parent. Similarly, Parent did not attend the IEP Team meeting, and the District did not proceed with review and revision of Student's IEP.
6. On May 10, 2017, the District sent written notice of a May 19, 2017 IEP Team meeting to Parent. On May 10, 2017, the Parent sent an E-mail to the educational diagnostician at y School confirming his/her availability to attend the IEP Team meeting on May 19, 2017. However, Parent did not sign a waiver of his/her right to receive ten (10) school days prior notice of the IEP Team meeting pursuant to 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.1.
7. Student's current IEP was developed at the May 19, 2017 IEP Team Meeting. Student's IEP initiation date is April 7, 2017 through March 14, 2018.
8. Parent attended the May 19, 2017 IEP Team meeting, in addition to the District's Supervisor of Special Education, the educational diagnostician, the assistant principal, a general education teacher, a special education teacher, and the emotional support program therapist. When the IEP Team convened on May 19, 2017, Student was receiving inpatient treatment, and had not yet been discharged to return to school.
9. Pursuant to the IEP, Student's educational needs are reading comprehension, vocabulary, and math computation. Student also requires supports and services to address Student's behavioral needs of compliance, peer interaction, work completion, and staying in assigned area.
10. The IEP Team further determined Student's behavior impedes Student's learning and the learning of others. Student therefore requires positive behavior interventions, supports, and services.
11. Student has a Behavior Assessment Plan ("BIP") which was developed on January 10, 2016 and revised on March 1, 2017. Student's IEP contains behavior goals focused on compliance and peer interaction. Baseline data was collected for compliance at x percent (x%) and appropriate peer interactions at x percent (x%).
12. A Crisis Management Plan was also developed for Student with Crisis Prevention Institute ("CPI") trained staff involved in implementing the plan.
13. Student's IEP further provides academic and behavioral services in a separate setting within an integrated setting. The IEP Team determined Student requires small group instruction with low levels of environmental stimulus provided through the District's emotional support program ("ESP").
14. The ESP program is a small, structured program with specific behavioral supports and services provided by staff to assist students who have intense emotional, social, and behavioral needs.

15. The IEP Team further determined Student requires extended school year services due to student's "...deficiency in mathematics, reading comprehension, and behavioral disorder. Student needs a learning environment that is structured and contains clear expectations for behavior and academic goals." Student also receives related services in group speech therapy and consultative counseling services.
16. The May 19, 2017 prior written notice states, in relevant part:
 - (a) Student would continue to be placed in the ESP program due to the need for a highly structured, small group setting to address Student's social, emotional, and behavioral needs.
 - (b) As Student was receiving inpatient treatment, the ESP program would provide a model of care to support the treatment recommendations upon discharge and provide a natural step down with supports from the inpatient treatment.
 - (c) The IEP Team discussed the District's specific plans to relocate the ESP program to x School, and Student's transfer to x School in the 2017 – 2018 school year, which Parent opposed.
 - (d) Student would receive specialized transportation to address safety concerns, and would be placed in the care of an adult through transportation.
 - (e) Student's functional behavior assessment would be updated, and Student would receive an evaluation for assistive technology needs.
 - (f) A structured system of communication would be implemented to keep Parent regularly informed of Student's behaviors and daily classroom participation.
17. Despite the supports in the IEP, Student did not make sufficient progress in academic and behavioral goals as reflected in the June 9, 2017 IEP Progress Report.
18. The District proceeded with its plans to transfer the ESP program from y School to x School, including all ESP program staff. In July 2017, the District held three "walk-thru" days at x School for families and students to acquaint themselves with the school building prior to the start of the 2017 -2018 school year.
19. On August 4, 2017, the District also sent an informational letter with an invitation to families to attend a "Welcome Back to School Social" at x School on August 17, 2017 to tour the school building and meet the administrators.
20. On August 12, 2017, the District sent an E-mail to families announcing the first day of school as August 29, 2017.

2017 - 2018 School Year

21. The ESP program was fully transferred to x School for the 2017 – 2018 school year, and Student was expected to attend.
22. Student did not attend x School on August 29, 2017, the first day of school.
23. On September 5, 2017, the ESP therapist sent Parent an E-mail inquiring as to Student's whereabouts. On September 7, 2017, Parent responded to the ESP therapist by E-mail stating Student was home and needed to be in school.
24. On September 19, 2017, the District sent written notice of an October 4, 2017 IEP Team meeting to Parent for the purpose of developing, reviewing, and revising Student's IEP.
25. On October 4, 2017, Parent sent an E-mail to the educational diagnostician at x School ("ED") stating Parent was not able to attend the IEP Team meeting. Parent requested transportation be arranged for Student to attend school.
26. On October 4, 2017, the ED sent an E-mail to Parent providing bus transportation information and inquiring as to Parent's availability to attend an IEP Team meeting for October 19, 2017. Parent was in agreement with October 19, 2017 as an IEP Team meeting date.
27. On October 6, 2017, the District sent written notice of the October 19, 2017 IEP Team meeting to Parent. However, Parent was unable to attend the meeting, and the District did not proceed with the meeting.
28. The District staff reported during interviews, and attendance records support, that Student began attending x School on October 11, 2017. Student's IEP was implemented at x School, and Student received the specialized supports and services in the ESP program as outlined in the IEP. There was no change to Student's educational program or placement when Student transferred to x School. Student was served in the same educational placement at x School pursuant to the IEP.
29. On November 30, 2017, the District sent written notice of a December 6, 2017 IEP Team meeting to Parent. The purpose of the meeting was to develop, review, and/or revise Student's IEP. Parent did not sign a waiver of his/her right to receive ten (10) school days prior notice of the IEP Team meeting.
30. Parent and Student attended the December 6, 2017, IEP Team meeting, in addition to the District's Supervisor of Special Education, the ED, the principal, a special education teacher, and the ESP therapist.

31. The December 6, 2017 prior written notice states, in relevant part:
 - (a) The functional behavioral assessment was being completed and a meeting would be scheduled to review the results.
 - (b) A referral and consent for an assistive technology evaluation was provided.
 - (c) A weekly homework packet will be sent home, and the IEP Team will provide Student with information about clubs and after school activities.
32. On December 13, 2017, Parent filed this complaint alleging the District violated Part B of the IDEA and implementing regulations by changing Student's educational placement from y School to x School without Parent's consent.

CONCLUSIONS

A. Educational Placement

A parent must be included as part of the group of persons who makes the educational placement decision for a child. *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.3rd 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.2nd 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 the assignment is made consistent with the child's IEP.

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 participated in the May 19, 2017 IEP Team meeting to develop Student's IEP, and determine the educational placement in a separate setting within an integrated setting. Subsequent thereto, the District implemented its administrative decision to relocate the entire school ESP classrooms from y School to x School for the 2017 – 2018 school year. x School

offered meaningful opportunities for parents and students to learn about and tour the building prior to the start of the 2017 - 2018 school year. The entire staff in the ESP Program relocated to x School and Student continued to receive the same services and supports at x School as outlined in the IEP. When Student was assigned to x School, Student continued in the same program and placement, and the IEP was implemented. *For these reasons, I find no violation of the IDEA or implementing state and federal regulations related to the change of educational placement.*

B. 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; 4 DE Admin Code § 925.22.1.1.

In this case, the District made efforts to consult with Parent to determine mutually agreeable dates and times for IEP Team meeting. On May 10, 2017, the District sent Parent written notice of the May 19, 2017 IEP Team meeting. While the notice contained the required content, it was provided less than ten (10) school days prior to the IEP Team meeting. Similarly, on November 30, 2017, the District sent Parent written notice of the December 6, 2017 IEP Team meeting, also less than ten (10) school days prior to the meeting. The District may convene the IEP Team meeting less than ten (10) school days prior to the meeting, but only if the parent provides a written waiver of the right to receive written notice ten (10) school days before the IEP Team meeting pursuant to the regulations. *For these reasons, 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.*

CORRECTION ACTION

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

1. On or before **April 13, 2018**, y and x Schools (“the Schools”) shall review school policies, procedures and practices and revise as necessary to ensure timely parent notification of IEP Team meetings. As necessary, the Schools shall develop a written procedure to ensure that parent notification is properly implemented prior to and during the IEP Team meeting process, and staff under the requirements of the regulations, including the waiver process. Documentation evidencing completion of these actions shall be submitted to the Director of Exceptional Children Resources on or before **April 30, 2018**.

2. On or before **April 13, 2018**, the Schools shall ensure professional development is provided to all special education staff and administrators in the Schools, regarding timely written parent notification of IEP Team meetings. The professional development shall be completed and the associated documentation (sign in sheets, copy of handouts, copy of Powerpoint, etc.) shall be provided to the Director of Exceptional Children Resources on or before **April 30, 2018**.

By:

Assigned Investigator