

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 19-03 (November 16, 2018)**

On September 18, 2018, Parent filed a complaint with the Delaware Department of Education (“Department”). The complaint alleges the 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, correspondence with Parent and District staff, and documents 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 Individuals with Disabilities Education Act (“IDEA”) and corresponding state and federal regulations by failing to provide Student with special education and related services, including physical, occupational, and speech therapies, while Student was medically unable to attend school during part of the 2017-2018 school year.

**FINDINGS OF FACT**

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

1. Student is X (X) years of age, resides in the District of Residence (“District of Residence”) and is currently attending the X (X<sup>th</sup>) grade at the special program classroom located at School located in the District. Student is identified as a student with a disability under the disability category of Other Health Impairment (“OHI”) as defined in 14 DE Admin Code §925.6.14. Student receives special education and related services pursuant to the IDEA and 14 Del. Admin Code. § 3101 *et. seq.*
2. On May 10, 2017, the District conducted an IEP Team meeting for an annual review of Student’s IEP. The School sent timely written notice of the meeting to Parent on April 6, 2017 in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
3. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent attended and participated in the meeting.
4. Student’s IEP was revised at the May 10, 2017 meeting. The IEP implementation dates are May 11, 2017 through May 10, 2018.

5. Pursuant to the IEP, Student requires a modified curriculum to meet Student's individual needs and cognitive skills. Student has educational needs in speech and language skills, fine and gross motor skills, visual perceptual skills, self-care, and socialization. Student also has a hearing impairment and requires accommodations for auditory access to the classroom.
6. Student's IEP includes annual goals in reading, math, and life skills.
7. In addition, the IEP contains an annual speech and language goal for functional communication requiring the Speech Language Therapist to provide therapy individually five (5) sessions per month for fifteen (15) minute sessions and consultatively two (2) sessions per month for fifteen (15) minutes.
8. The IEP also contains an annual fine motor goal for engagement, attention to task, and participation requiring the Occupational Therapist to provide therapy individually two (2) sessions per month for fifteen (15) minute sessions and consultatively one (1) session per month for fifteen (15) minutes.
9. The IEP further contains an annual gross motor goal for ambulation requiring the Physical Therapist to provide therapy individually three (3) sessions per month for fifteen (15) minutes and consultatively one (1) session per month for fifteen (15) minutes.
10. The IEP Team determined Student's educational needs could be met in a "Setting C." Student would participate in the general education classroom less than forty (40%) of the day due to the extensive modifications to the curriculum, the support Student requires, and the life skills based programming focusing on Student's individual needs.
11. Parent signed the IEP in agreement with the proposed program and placement. The District 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.
12. On or about October 30, 2017, Parent sent a text message to Student's Special Education Teacher advising that Student was scheduled for surgery in January 2018. During the interviews, Parent reported sending the text message, and Special Education Teacher reported receiving the text message.
13. In response, the Special Education Teacher shared the information about Student's surgery date with the Educational Diagnostician in an October 31, 2017 E-mail. The Special Education Teacher also sent Parent a homebound services application in Student's backpack.
14. The homebound application requests Student's physician to indicate whether Student's condition prevents attendance in school, whether Student is physically able to

participate in homebound instruction, whether Student has any limitations or restrictions for the homebound instruction, the estimated length of time Student will be unable to attend school, and Student's diagnosis.

15. Prior to Student's medical leave, the District did not schedule an IEP Team meeting to determine how the special education and related services would be provided to Student during the medical absence.
16. The Special Education Teacher reported the homebound application was not received by the school prior to Student's surgery.
17. On January 8, 2018, Student had surgery. After five (5) days in the hospital, Student was discharged and returned home for recovery.
18. However, Student was readmitted five (5) days later due to post-surgery medical complications and remained in the hospital until March 13, 2018.
19. School staff were not able to deliver the homebound application to Parent at the hospital due to the nature of Student's post-surgery medical complications. The Special Education Teacher E- mailed Parent the homebound application on March 27, 2018, and followed-up by E-mail again on April 11, 2018. The application was sent to Parent an additional time by E-mail on April 12, 2018 by the Special Education Teacher.
20. On April 12, 2018, Student's physician and Parent completed and signed the application for homebound services, and on April 16, 2018, it was received by the District. Student's physician reported Student was physically unable to attend school, but was able to participate in homebound instruction without restrictions.
21. The District made arrangements for homebound instructional services to begin. The Homebound Service Report documents instruction began on April 26, 2018 and Student was to receive six (6) hours of instruction per week.
22. However, during interviews, the Special Education Teacher reported Parent was in agreement with Student receiving four (4) hours of instruction a week due to Student's medical condition.
23. The Homebound Service Report documents a total of ten (10) hours of instruction were provided to Student by Special Education Teacher from April 26, 2018 to May 15, 2018.
24. The Special Education Teacher reported the homebound instruction addressed the reading, math, and life skills goals outlined in Student's IEP.
25. Student continued to receive homebound instructional services, but not related services, including physical, occupational, and speech therapies, while medically absent from school.

26. On June 6, 2018, the Physical Therapist documented the District had not received any post-surgery orders from Student's surgeon to direct whether Student could resume physical therapy services as outlined in the IEP. *See*, 24 DE Admin Code § 1.1.1. *et. seq.*
27. On September 4, 2018, the Physical Therapist received the release from the surgeon permitting Student to resume physical therapy services. During interviews, school staff confirmed physical therapy services were not provided to Student during the medical leave due to the absence of obtaining the surgeon's orders.
28. But, with respect to speech therapy services, school staff confirmed services were not provided while Student was receiving homebound instruction because the District was unable to fill the position of Speech Language Therapist position that was vacant since January 2018.
29. The occupational therapy notes document Student missed individual sessions from January through May, 2018 while Student was medically absent from school. However, Student did receive monthly consultative occupational therapy services during this period and the consultative service delivery was documented consistent with the IEP.
30. On May 7, 2018, the District conducted an IEP Team meeting for an annual review of Student's IEP. The School sent timely written notice of the meeting to Parent in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
31. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent attended and participated in the meeting.
32. The Director of Special Education for the District of Residence reported Director was not aware that Student was receiving homebound instruction until District of Residence was invited to the May 7, 2018 IEP meeting.
33. Student's IEP was revised at the May 7, 2018 meeting. The IEP implementation dates are May 8, 2018 through May 7, 2019. School staff reported that compensatory related services were discussed at the meeting.
34. The May 7, 2018 prior written notice states, in relevant part:
  - (a) Student is eligible for extended school year services for reading, math, and speech therapy.
  - (b) Student's occupational and physical therapy services were revised to consultative services, one (1) session per month, until Student returns to school to be re-assessed.
35. Parent signed the IEP in agreement with the proposed program and placement on May 15, 2018.

36. On May 17, 2018, Student returned to school.
37. On May 30, 2018, the District received a letter from Student's physician, dated May 16, 2018, confirming Student was medically cleared to return to school.
38. On June 28, 2018, the District conducted an IEP Team meeting to review and revise Student's IEP. Parent signed a waiver of the right to receive ten (10) school days prior notice of the meeting pursuant to 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
39. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent attended and participated in the meeting to revise Student's IEP.
40. The June 28, 2018 prior written notice states, in relevant part:
  - (a) Student's occupational therapy goals were revised from consultative to direct services since Student returned to school.
  - (b) Compensatory services for speech, occupational, and physical therapy were reviewed.
  - (c) For compensatory speech therapy services, Student was owed three hundred (300) individual minutes and one hundred twenty (120) consultative minutes. As of the date of the IEP Team meeting, Student had received ninety (90) individual minutes and seventy (70) consultative minutes of compensatory services.
  - (d) For compensatory occupational therapy services, Student was owed three hundred (300) individual minutes and one hundred (100) consultative minutes. As of the date of the IEP Team meeting, Student had received sixty (60) individual minutes and (70) consultative minutes of compensatory services.
  - (e) The IEP Team would send an update to Parent regarding any compensatory physical therapy services provided to Student during the summer.<sup>1</sup>
41. Student received extended year services during summer school which began on June 20, 2018 and ended on July 26, 2018.
42. During the summer school period, Student also received the compensatory speech therapy services. Records provided by the District document Student received compensatory speech therapy services beyond the minutes that were owed. In addition, the District contracted with the Speech Language Therapist who provided compensatory services during summer school.

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<sup>1</sup>As noted, the District did not receive the surgeon's order directing that Student could resume physical therapy services until September 4, 2018. Therefore, compensatory physical therapy services were not owed to Student at the time of the June 28, 2018 IEP Team meeting.

43. Student also received the compensatory occupational therapy services during the summer school period. Records provided by the District document Student received the full compensatory services owed.
44. No documentation was provided to indicate District informed District of Residence in a timely way Student was requesting homebound instruction, and received homebound instruction later in the school year.

## CONCLUSIONS

### **A. Homebound Instructional Services**

As noted above, the District received the homebound services application completed by Student's physician and Parent on April 16, 2018. The physician noted that Student was physically unable to attend school, but could receive homebound instruction without restrictions. Accordingly, the District made arrangements for homebound instruction to begin on April 26, 2018. Due to the nature of Student's post-surgery complications, homebound services required the physician's approval. But as noted below, the District should have convened Student's IEP Team in a prompt manner to determine the amount and nature of the services to be provided to Student in the homebound setting, rather than making the decision administratively. Student's IEP Team should have reviewed Student's educational needs, the services Student required while medically absent from school, and changed Student's placement to the homebound setting while medically necessary.

The evidence demonstrates the Special Education Teacher received a text message as October 31, 2017 noting Student would be having surgery in January 2018. The records demonstrate school staff were aware of the need to conduct an IEP Team meeting to change Student's placement to the homebound setting, and review the services Student required to receive FAPE while medically absent from school.

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. Decisions involving the provision of FAPE to a child with a disability are made as an IEP Team meeting to include the parent with the provision of procedural safeguards. In this case, I find no evidence an IEP Team meeting was held, to include Parent, to address the services Student required and the placement while medically absent from school, either before or after the homebound instruction began. **For this reason, I find a violation of Part B of the IDEA and state and federal regulations related to parent participation in the program and placement decision concerning Student.**

## **B. Related Services**

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) and 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. The related service page of Student’s May 11, 2017 IEP requires therapies to be provided in both individual and consultative sessions through May 10, 2018. Records provided by the District demonstrate Student did not receive individual speech, occupational, and physical therapy services during homebound instruction in the manner required by Student’s IEP.

### **(1) Physical Therapy Services**

The District did not provide physical therapy services to Student during Student’s medical absence from school. However, the District did not receive the surgeon’s order directing that Student could resume physical therapy services until September 4, 2018, and well after Student had returned to school. The District was not obligated to provide Student with physical therapy services until approved by the surgeon, and thus, there was no denial of services.

### **(2) Speech Therapy and Occupational Therapy Services**

The same is not true for occupational and speech therapy services. According to homebound instruction records and interviews, individual occupational and speech therapy sessions based on the May 11, 2017 IEP were not provided during Student’s medical absence and receipt of homebound instruction. School staff reported it was the District’s practice to revise Student’s service delivery to consultative while Student was receiving homebound instruction, then calculate all related services owed to Student while absent from school, and provide the compensatory services when Student returns to School. This practice deprived Student of the individual therapy services required Student while receiving homebound instruction to work on IEP goals and areas of academic need. In addition, the District failed to revise Student’s service delivery to consultative through a properly convened IEP Team meeting with the provision of procedural safeguards to Parent to ensure adequate parent participation. **For these reasons, I find a violation of the IDEA and corresponding state and federal regulations regarding the provisions of related services to Student.**

As noted, the District calculated the compensatory speech and occupational therapy services owed to Student on an individual and consultative basis and the compensatory service plan was reviewed and approved at the June 28, 2018 IEP Team meeting with Parent in attendance. The prior written notice, dated June 28, 2018, documents the District’s agreement to provide the compensatory therapy services to Student during the summer school period. Records from the Speech Language Therapy and Occupational Therapist document the services were delivered to Student to compensate and fulfill the service time while Student received homebound instruction from April 26, 2018 through May 15, 2018.

## **CORRECTIVE ACTION**

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

### **Student Level Corrective Action**

1. To address the denial of FAPE from March 13, 2018 through May 17, 2018, compensatory education must be provided by the District for academic and related service. The District will calculate the number of hours/sessions owed to the Student and come to an agreement with the Parent regarding the number of hours/sessions owed. The District will submit the agreed upon number of hours/sessions owed to the Director of Exceptional Children Resources, as well as a plan for delivering the compensatory education, including a timeline for service delivery and how the services have been/will be provided. This plan must be submitted to Director of the Exceptional Children Resources on or before **December 1, 2018**.
2. The District shall provide to the Director of Exceptional Children Resources and the Parent, on or before **June 1, 2019**, records that confirm Student's receipt of compensatory services, which shall include, but need not be limited to, a list of dates and times that services were provided, a description of the service, and any related records. Any records provided to the Director of Exceptional Children Resources and Parent to evidence the provision of services to Student must be verified in writing by the District's administration as an accurate representation and account of services provided.

### **District Level Corrective Action**

1. On or before December 1, 2018, the District shall review its policies, practices, and procedures, and revise as necessary, to ensure parent participation in program and placement decisions concerning children with disabilities. As necessary, the District shall develop a written procedure to ensure that IEP Team meetings are convened when children are medically absent from school and may require homebound instruction to ensure the services are reviewed and FAPE is provided based on the individual needs of each student. The procedure shall ensure parent participation consistent with state and federal regulations, and the provision of procedural safeguards to parents. The District shall take actions to ensure all relevant school staff understand the requirement of the applicable regulations and requirements cited in this decision. Documentation supporting completion of these actions shall be submitted to the Director of Exceptional Children Resources for the Department on or before **December 31, 2018**.
2. On or before **January 31, 2019**, the District shall ensure professional development is provided to all special education staff in its schools regarding parent notification of change of placement regarding homebound instruction and provision of related services during

homebound instruction. The plan shall include procedures and options for retaining and recruiting therapists to provide the related services. 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 for the Department on or before January 31, 2019.

3. Since Student is a resident of the District of Residence and was attending a program within the District, the District should have promptly notified the District of Residence of proposed changes to Student's program and placement. Similarly, the District of Residence, as the district of residence, is responsible for ensuring FAPE is provided to Student, and had a duty to monitor Student's program and placement. Corrective action is directed to both districts to review all policies, practices, and procedures and revise as necessary, to ensure communication and collaboration between the two districts to provide FAPE to students. A copy of these shall be provided to the Director of Exceptional Children's Resources for the Department on or before **January 31, 2019**. The submitted documents must be signed by both Special Education Directors in each district.

By: \_\_\_\_\_  
Assigned Investigator