

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 19-04 (December 14, 2018)
(Revised February 6, 2019)**

On October 17, 2018, the Parent filed a complaint with the Delaware Department of Education (DDOE). The complaint alleges the School District (District) violated state and federal regulations concerning the provision of a free, appropriate public education (FAPE) to Student under the Individuals with Disabilities Education Act (IDEA).¹ 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 documents provided by the Parent and the District. Interviews were conducted with Parent, District and school staff.

ONE YEAR LIMITATIONS PERIOD

In accordance with the 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 Department received the complaint on October 17, 2018. Therefore, the Department's findings address alleged violations from October 17, 2017 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. On September 20, 2018, District made a unilateral decision to change Student's placement from homebound to part-day school-based service so Student could earn credits for career and technical education (CTE) graduation requirements.
2. Parent was not provided a new IEP reflecting the change of placement.
3. District insists on placement change.

¹ The complaint decision identifies some people and places generally, to protect personally identifiable information about the student from unauthorized disclosure. An index of names is attached for the benefit of the individuals and agencies involved in the investigation. The index must be removed before the complaint decision is released as a public record.

FINDINGS OF FACT

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

1. Student began receiving special education services in first grade as a student with an Other Health Impairment due to a diagnosis of ADHD.
2. Student began missing instructional time in his seventh grade year and has been in truancy. During that year, Student moved to School District and attendance has been a concern throughout Student's enrollment.
3. Student's family moved to District when Student began second year in X grade (2014-2015). Student's grandparent passed away during this time. Student responded with depression and would not attend school. Student thus began receiving homebound instruction during the middle of Student's Xth grade school year.
4. Student is X (X) years of age and currently receives special education homebound services. 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 Other Health Impairment as defined in 14 DE Admin Code § 925.6.14.
5. Student is in Xth grade and has earned 15 of 26 credits needed to graduate according to a transcript dated December 10, 2018.

2014-2015 School Year-Second Year in Xth Grade

6. On May 2, 2014, Student began receiving treatment for depression and social anxiety at Delaware Guidance Services.
7. On October 14, 2014, the IEP Team met to conduct an annual review of Student's IEP, conduct transition planning, and to develop, review, and/or revise the IEP. The prior written notice states, in relevant part:
 - a. The purpose of the IEP meeting was to hold an annual review of Student's IEP in order to complete a School District IEP.
 - b. Parent shared that Student shuts down and seems depressed. Student received outside counseling.
 - c. Teachers reported Student had poor attendance.
 - d. The IEP Team agreed that Student continue to receive special education services in the general education setting.
 - e. The IEP Team agreed to meeting in Spring, 2015 to determine Extended School Year (ESY) services.

8. On November 13, 2014 the IEP Team met to conduct a revision to the Student's IEP. The prior written notice states, in relevant part:
 - a. The purpose of the IEP revision meeting was to include CTE teacher.
 - b. Parent shared Student is depressed and taking death of grandparent hard. Parent questioned if Student could receive homebound instruction.
 - c. Educational Diagnostician was going to look into options.
 - d. Teacher reported that attendance was impeding Student's learning.

9. On February 19, 2015, the IEP Team met to conduct a revision to the Student's IEP. The prior written notice states, in relevant part:
 - a. Student will receive homebound instruction for approximately 60 days due to medical referral.
 - b. Student's placement is indicated as follows:
 - i. Regular class \geq 80% of the day from October 29, 2014 through February 18, 2015
 - ii. Homebound/Hospital from February 19, 2015 through May 15, 2015
 - iii. Regular class \geq 80% of the day from May 16, 2015 through October 28, 2015

10. On May 11, 2015, the IEP Team met to hold an annual review of Student's IEP. The prior written notice states in relevant part:
 - a. Homebound instruction is implemented two times per week
 - b. Due to the need for emotional support, Student is receiving homebound services for the remainder of the 2014-2015 school year and will transition back into the regular setting at the beginning of Xth grade.
 - c. Student is eligible for Extended School Year Services (ESY) due to Student's degree of impairment.
 - d. Student's placement is indicated as follows:
 - i. Homebound/Hospital from May 28, 2015 through June, 16, 2015
 - ii. Homebound/Hospital from June 29, 2015 through August 7, 2015
 - iii. Regular class \geq 80% of the day from September 1, 2015 through May 27, 2016

2015-16 School Year-Xth Grade

11. Student did not report to school in the Fall. A truancy court summary from September 2015 indicated that Student continued to receive counseling services from Delaware Guidance every two weeks. Student had seven unexcused absences. Student was given a Community Supervision Resource Connection (CSRC) referral and referred to equine therapy program. Student was ordered to attend school and to return to school.

12. An October 2015 truancy court summary indicated that Student had not attended school since the last court date. The judge ordered a full psychological evaluation from an outside provider. The judge also ordered participation in CSRC. However, CSRC had no open spots.
13. A November 2015 truancy court summary indicated that the homebound teacher filed contempt charges because Student was not attending school and Student pled guilty. Aquila reported a positive drug screen. It was noted that Student would be meeting with a probation officer.
14. On December 16, 2015, Parent requested homebound application. Previous Director of Student Supports and Compliance explained to Parent that without documentation of a medical need, homebound instruction could not be provided and agreed to have application available for Parent to pick up. Parent asked about GED and homeschool options. The previous Director of Student Supports and Compliance requested that Parent contact school to schedule an IEP meeting to discuss placement and educational options.
15. A January 2016 truancy court summary indicated that Student was not attending school. Student was attending Aquila for treatment. The judge determined that Student had violated probation and ordered Student to attend People's Place until the next case review. Student was to be transported to and from school daily.
16. On January 19, 2016, the IEP Team met to review the reevaluation that was conducted. The prior written notice states that Student continued to meet the eligibility criteria for special education and related services as a student with an Other Health Impairment. The IEP Team considered and rejected an eligibility classification of Emotional Disturbance because there were discrepancies between Parent and Student reports.
17. On January 20, 2016, the previous Director of Student Supports and Compliance spoke with Parent about the meeting held the previous day. Parent requested support for next steps with the student. Previous Director of Student Supports and Compliance explained the Life Skills Program. Parent was going to speak with student about it. They also discussed adult education options, homeschool, homebound, Job Corps and GED.
18. On January 22, 2016, Parent called the previous Director of Student Supports and Compliance and stated Student was not happy with any of the educational options presented. Instead, Student wanted to receive homebound services. The previous Director of Student Supports and Compliance explained that the expectation was for Student to return to school and that homebound services were not an option without documentation of the medical need. Parent indicated that Student had a doctor's appointment that day and was provided the application for homebound instruction form to take to the doctor.
19. On January 26, 2016 Parent reported to the previous Director of Student Supports and Compliance that Student was taken to Stevenson House.

20. On January 27, 2016 Parent reported to the previous Director of Student Supports and Compliance that Student was released from Stevenson House and taken to People's Place.
21. On February 2, 2016, District approved application for homebound instruction through April 2, 2016 due to diagnosis of general anxiety disorder and depression NOS.
22. On March 3, 2016, the Previous Director of Student Supports and Compliance expressed in an email to Guidance Secretary at High School that Parent wanted Student to receive homebound services. However, since Student had been attending People's Place regularly Student thus demonstrated that Student could attend school and would have to return to school. Parent agreed to bring Student to school the next day.
23. On March 9, 2016, Guidance Secretary at the High School emailed the Previous Director of Student Supports and Compliance stating that Parent was contacted that day regarding Student's attendance and was told Student was still enrolled in District. Parent responded that Parent was doing everything to get Student to school.
24. An email, dated April 4, 2016 from the Coordinator of Student Attendance and Data Management to District Administration, indicated that Student has missed 82.5 days of school that year. In addition, the judge wanted to continue with Aquila along with Multi-Systemic Therapy with the family.
25. The previous Director of Student Supports and Compliance responded to the email stating that homebound services were not approved and that it had been explained to Parent.
26. An April 25, 2016 truancy court summary indicated that Student had missed 101.5 days of unexcused absences during the school year. Parent hired a lawyer and requested a new probation officer. Student would continue to attend Aquila.
27. A letter dated April 28, 2016 and signed by a psychiatric mental health nurse practitioner from Delaware Guidance stated that Student was being treated for depression and social, anxiety. The letter recommended short term homebound status for at least 10 days to two months. On May 2, 2016, the District approved Student's application or homebound instruction. Homebound instruction was approved through June 10, 2016.
28. On May 3 and 4, 2016, Parent called the previous Director of Student Supports and Compliance inquiring about a homebound instructor. A homebound instructor was secured on May 4, 2016.
29. On May 5, 2016, the homebound instructor was unsuccessful in an attempt to call the Parent. The homebound instructor was provided another phone number of May 6, 2016.

30. On May 12, 2016, the previous Director of Student Supports and Compliance sent Parent a letter indicating that the District wanted to schedule a meeting to discuss a transition plan to support Student in returning to the High School. A proposed meeting date of May 25, 2016 was provided.
31. An IEP dated May 16, 2016 indicated that Student was to receive instruction for the remainder of the school year and the following school year in a regular setting. Student was eligible to receive ESY services due to degree of impairment and regression/recoupment. It was noted that ESY was needed to support Student with regaining of academic and social skills, as well as provide Student with an opportunity to acclimate to High School. In contradiction to this, the same IEP also states that Student was currently receiving homebound instruction and a transition plan was being developed to support Student's return to the High School during the 2016-2017 school year. The IEP also indicated that individual counseling services were to be provided once per week for 30 minutes from May 4, 2016 through June 10, 2016, as well as from August 26, 2016 through May 3, 2017.
32. The June 3, 2016 prior written notice states, in relevant part:
 - a. Purpose of meeting was to conduct an annual review of Student's education progress
 - b. Individual counseling services provided one time per week for 30 minutes from May 4, 2016 through June 10, 2016.
 - c. Parent agreed to waive ten day notice of meeting, and for documents to be circulated, negotiated, and executed via counsel in lieu of a meeting
 - d. Identified needs will be addressed through goals and benchmarks
 - e. Benchmarks will be revised once Student transitions back to school
 - f. Anxiety need will be addressed through accommodations however IEP may be revised to include goals and benchmarks upon completion of a functional behavioral assessment.
 - g. Student will receive direct counseling
 - h. IEP Team recommends ESY due to extenuating circumstances and regression/recoupment
 - i. Has missed 121 days this academic year causing regression.
 - j. Recommended Student receive a minimum of 7.5 hours of instruction per week
 - k. Educational placement is homebound
 - l. IEP Team proposed transition plan to support return to High School during 2016-2017 school year.

33. An Independent Educational Evaluation (IEE) was conducted on August 9 and 10, 2016 at parent request. The IEE indicates that the therapist from Delaware Guidance stated that Student had not been seen in therapy since April 2016 and therapist saw Student infrequently throughout 2015. Student was noted to be noncompliant with taking medication for Student's diagnosis of ADHD. Therapist reported that Therapist kept Student's case open to support Parent as parent was feeling pressured by the school due to Student's truancy.
34. The IEE indicated that Student met the eligibility criteria for Emotional Disturbance, Other Health Impairment and Specific Learning Disability.

2016-2017 (Xth grade)

35. An IEP meeting was held on November 22, 2016 to determine continued eligibility for special education and related services, conduct an annual review of the IEP, and for the purpose of draft exchange via counsel.
36. An evaluation summary report (ESR), dated November 16, 2016, indicated that Student was receiving homebound services due to emotional needs and school anxiety. It was also noted that these services had been provided for the past two years, as well as during the summer.
37. The ESR included information from the IEE and indicated that Student was eligible to receive special education services under the eligibility classification of learning disability in the following areas: basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving, and written expression.
38. The November 22, 2016 prior written notice states, in relevant part:
 - a. Special education services provided both in separate special education classes and regular setting for the duration of the IEP (which was November 21, 2017).
 - b. Individual counseling services once per week for 30 minutes for the duration of the IEP
 - c. Student is eligible for special education and related services as a student with a learning disability in basic reading, reading comprehension, written expression, mathematics reasoning, and mathematics calculation and that supports are needed to address anxiety.
 - d. The District agreed to engage in a draft exchange to determine areas of need, goals and need for ESY services, least restrictive environment, and a transition plan for Student's return to the high school.
 - e. The IEP Team proposed services being delivered in the separate special education and regular education setting. The transition schedule would be implemented on January 3, 2017. The IEP Team proposed school attendance for the remainder of the second quarter for three periods per day. During the third quarter, the fourth

period class would be added to the schedule and a full day schedule would begin for the fourth quarter.

- f. The IEP Team agreed to reconvene by May 2017 to determine eligibility for extended school year services.
39. Although the Prior Written Notice and the ESR state that the Student is eligible to receive special education services as a student with a learning disability, the IEP lists the Student's educational classification as Other Health Impairment. In addition, the ESR indicates that reading fluency is one of the areas in which the Student has a learning disability; however, the Prior Written Notice document does not indicate this.
 40. The IEP indicates that Student should receive services in setting B from November 22, 2016 through November 21, 2017. However, text within the IEP indicates that Student should begin transitioning back to High School on January 3, 2017. The IEP does not indicate that homebound services are being provided at present.
 41. Current Director of Special Education and Educational Diagnostician reported that the ESR and front page of IEP are not signed as Parent attended the meeting via phone and drafts went through Parent's counsel to review.
 42. Current Director of Special Education and Educational Diagnostician reported that Student did not return to school.

2017-2018 School Year Xth Grade

43. On December 12, 2017, the District sent written notice of a December 19, 2017 IEP Team meeting to Parent. The Parent was also given notice of meeting the same day in person via the homebound teacher. The purpose of the meeting was to conduct an annual review of the IEP, conduct transition planning, and develop, review, and revise the IEP. Parent did not sign a waiver of her right to receive ten (10) school days prior notice of the IEP Team meeting although the Prior Written Notice dated December 19, 2017 indicates that Parent confirmed attendance through the homebound teacher.
44. As documented in the notice of meeting, Parent, Student, Educational Diagnostician, Designee, General Education Teacher, Special Education Teacher, and Career Technical Education Teacher were invited to the meeting.
45. The December 19, 2017 prior written notice states, in relevant part:
 - a. The homebound teacher contacted Parent via telephone to see if Parent could participate in the IEP meeting via phone. Parent requested the meeting be rescheduled for December 22, 2017.
 - b. The IEP Team proposed to reschedule the meeting.

46. On January 18, 2018, the District provided notice of a February 15, 2018 IEP Team meeting via phone. The District sent timely written notice of the meeting on January 30, 2018 via mail in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22. The purpose of the meeting was to conduct an annual review of the IEP, conduct transition planning, and develop, review, and revise the IEP.
47. As documented in the notice of meeting, Student, Parent, Special Education Teacher, Principal, Director of Special Education, Career Technical Education Teacher, and General Education Teacher were invited to the meeting.
48. The February 15, 2018 prior written notice states, in relevant part:
 - a. Parent/Student was given three notices of the meeting. Student did not attend and Parent was unable to attend.
 - b. The IEP Team chose to reschedule the meeting for March 5, 2018 at 9:00.
49. On February 15, 2018, the District sent timely written notice of the meeting on March 5, 2018 via mail in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22. The District also provided two other notices of the meeting on February 27, 2018 via phone and on March 2, 2018 via mail. The purpose of the meeting was to conduct an annual review of the IEP, conduct transition planning, and develop, review, and revise the IEP.
50. As documented on the first page of the IEP dated March 5, 2018, the Special Education Teacher, Principal, Career and Technical Education Teacher, General Education Teacher, Director of Student Supports, and Nurse attended the meeting. A representative from the Division of Vocational Rehabilitation was invited to the meeting as documented in the notice of meeting but did not attend. Parent signed an IEP Meeting Excusal Form excusing the DVR representative from attending the meeting in compliance with 14 DE Admin Code § 925.21; CFR § 300.321.
51. Although the Parent and Student did not attend, the IEP Team meeting, proper notice was provided and the meeting proceeded with the other IEP Team members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.22.6.
52. The March 5, 2018 prior written notice states, in relevant part:
 - a. The District proposed an Annual IEP for Student with a homebound placement from March 5, 2018 through March 4, 2019
 - b. Individual counseling services once per week for 30 minutes from March 5, 2018 through March 4, 2019
 - c. Homebound Teacher reported that Student is completing coursework; however, Student is below grade level in all areas regarding basic skills.

- d. Student shared with Homebound Teacher that Student has no interest in returning to school.
 - e. Student is a student with a learning disability in the areas of math calculation, math reasoning, reading comprehension, vocabulary, basic reading, written expression, as well as anxiety. Student currently receives homebound services due to anxiety.
 - f. The IEP Team agreed that homebound services was the least restrictive environment for Student
 - g. Eligibility for Federal extended school year services would be determined in May 2018
 - h. Educational Diagnostician shared the Age Majority form with the IEP Team
53. The Educational Representative After Attainment of Age 18 form was not completed by the IEP Team as required by 14 DE Admin Code § 926.20.
54. Although the Prior Written Notice Document indicates the student has a learning disability, the IEP lists Other Health Impairment as the Student's educational classification The Prior Written notice also does not document Student's learning disability in reading fluency. The prior written notice documents a learning disability in vocabulary which is not a valid eligibility category. The prior written notice does not include a learning disability in reading fluency which is however documented in the ESR
55. March 5, 2018 is listed as both the meeting date and the IEP initiation date on the IEP. Parent did not sign a waiver of her right to receive ten (10) school days prior notice.
56. November 21, 2017 is listed as the end date of the previous IEP and thus expired before the March 5, 2018 IEP was developed.
57. District reported all special education documents pertaining to the March 5, 2018 IEP meeting were provided to Parent's attorney and not signed.
58. On June 1, 2018, the District provided notice of June 11, 2018 IEP Team meeting to Parent and Student via phone. They were also provided notice of the meeting on June 5, 2018 in person. The purpose of the meeting was to discuss ESY services. Parent and Student did not sign a waiver of their right to receive ten (10) school days prior notice of the IEP Team meeting.
59. As documented in the notice of meeting, Parent, Student, Special Education Teacher, Director of Special Education, Director of Student Supports, General Education Teacher, and Assistant Principal were invited to the meeting.
60. The June 11, 2018 prior written notice states, in relevant part:
- a. Student will receive homebound services from March 5, 2018 through March 4, 2019

- b. Individual counseling services once per week for 30 minutes from March 5, 2018 through March 4, 2019
- c. Parent attended meeting via phone. Student was not in attendance.
- d. IEP Team determined Student qualified for ESY services due to regression/recoupment. Student will receive ESY services for Math, Writing, Reading, and Vocabulary.
- e. Parent inquired as to the number of credits Student earned, as well as needs in order to graduate. Director of Special Education agreed to look at Student's transcript to determine courses needed to graduate.

61. Although the IEP Team agreed that Student was eligible to receive ESY services, there is no evidence that the revision was made to the IEP document.

2018-2019 School Year- Xth grade

62. On September 10, 2018, Parent emailed Guidance Counselor asking when Student would receive school books in order to continue with homebound instruction. Parent also asked for information about Student obtaining credit for Physical Education with the homebound instructor.

63. Guidance Counselor responded the same day indicating that the books were in the main office at the High School and that there was a Physical Education course on PLATO that Student could complete with the homebound teacher.

64. Parent sent another email to Guidance Counselor on the same day indicating that Parent was informed that the homebound instructor was not to work with Student until an IEP meeting was held as per the Special Education Director. Parent requested clarification and reported that Student would not be transitioning back to the High School and would continue with homebound until completion. Parent inquired as to what could be done as far as Student's IEP instruction.

65. On September 11, 2018, the District provided notice of a September 20, 2018 IEP Team meeting to Parent and Student via phone. The purpose of the meeting was to discuss placement. Parent and Student did not sign a waiver of their right to receive ten (10) school days prior notice of the IEP Team meeting.

66. As Stated in the prior written notice dated September 20, 2018, Parent and Student attended the meeting via phone. The following people were also in attendance at the meeting: Director of Special Education, Director of Transportation and Student Services, Special Education Teacher, Guidance Counselor, and Homebound Instructor.

67. The September 20, 2018 prior written notice states, in relevant part:

- a. Student will receive homebound instruction from March 5, 2018 through March 4, 2019
- b. Individual counseling services once per week for 30 minutes from March 5, 2018 through March 4, 2019

- c. Parent shared that Parent would like homebound services to continue. Parent picked up Student's school books and is not sure of next steps.
 - d. Student has 13 credits and needs 26 total to graduate.
 - e. Director of Special Education shared that IEP Team is concerned with the type of credits Student needs to graduate.
 - f. The IEP Team discussed the courses Student could take via homebound and the requirement that Student also needs to complete a career/technical education (CTE) pathway course which is taught by a certified career technical education teacher.
 - g. Director of Special Education indicated that Director of Special Education would like to create a modified schedule so Student could complete CTE courses.
 - h. Director of Transportation and Student Services shared requirements to receive homebound instruction which include continued medical documentation.
 - i. Parent reported that Parent did not think it was fair to Student due to the way Student was treated at school when Student previously attended.
 - j. Student shared that Student would prefer to come to school in the afternoon and wanted to focus on Culinary.
 - k. Director of Special Education said that Student could not complete 13 credits in one year and did not want to overload Student so Student is unsuccessful.
 - l. Student is currently taking English 12, Math 12, and is approximately halfway into those classes via Plato with the homebound instructor.
 - m. Student will also attend three classes at school.
 - n. The IEP Team shared Student can take additional classes after completion of some Plato courses.
 - o. Parent agreed to get Student to School at required times since Student did not want to take advantage of the van the District offered to provide.
 - p. Classes would be Monday through Friday.
 - q. Director of Transportation and Student Supports agreed to provide uniforms for Student to wear to school as it is District policy that Students wear uniforms.
 - r. Educational Diagnostician will contact Parent and Student to revise IEP to better align to Student's transitional needs.
 - s. Student will start on Monday, September 24 with class times as follows: A Day = 1:22-2:30; B Day = 12:11-1:19 for Culinary, 1:22-2:30 for P.E.
68. On September 24, 2018, Parent emailed Guidance Counselor to request a copy of the IEP that the District wanted to put in place.
69. On September 25, 2018, Guidance Counselor responded that Guidance Counselor would inform the Educational Diagnostician.
70. On September 25, 2018, Parent sent an email requesting a copy of the IEP from the meeting held on September 20, 2018. The same day, the Educational Diagnostician emailed the Parent a copy of the IEP and stated that an IEP revision meeting would need to be held to revise the IEP to align to the classes discussed at the IEP team meeting held on September 20, 2018. The Educational Diagnostician requested dates and times the Parent was available in October.

71. Notes from September 28, 2018 indicate that the Parent and the District Director of Special Education engaged in a discussion that focused on the Parent's intent to not return to school on a modified schedule. Parent alleged that it had never been part of the plan to return Student to school. Parent reported that Parent's attorney told Parent it was illegal to not enable Student to take elective courses at home. The District responded that if there was no intention to complete graduation requirements, Parent should consider withdrawing Student.
72. The call was lost. Then, the Director of Special Education expressed that the phone had bad reception and for Parent to call the Director of Special Education or the Educational Diagnostician to discuss Student's plan moving forward.

CONCLUSIONS

A. *Homebound Documentation*

According to state regulations, supportive instruction (homebound) is meant to be temporary. State regulations detail the eligibility requirement for homebound instruction which include the following: District receipt of required certification that sudden illness, accident, episodic flare up of a chronic condition, injury, or pregnancy, childbirth or related medical condition will prevent the student from attending school for at least 10 school days. *See*, Admin Code § 930.1.0. The last documentation of the need for homebound instruction was provided on April 28, 2016 signed by a psychiatric mental health nurse practitioner from Delaware Guidance stating that Student was being treated for depression and social anxiety.

The November 22, 2016 IEP and prior written notice state that Student would begin transitioning back to school on January 3, 2017. This did not occur and on the March 5, 2018 IEP, Student's placement was changed to homebound through March 4, 2019. This was done without proper documentation of need. This same decision to continue homebound services is again found in the June 11, 2018 prior written notice.

On the September 20, 2018 prior written notice, it is indicated that the IEP Team developed a transition plan for Student to begin transitioning back to the High School. This was not properly documented in the IEP. On September 28, 2018, Parent and District Director of Special Education engaged in a discussion where Parent indicated it was not part of the plan for the Student to return to school. ***There is no violation of Part B of the IDEA because State law addresses the requirements for homebound instruction.***

B. *Revision of IEP Regarding Change of Placement*

State and federal regulations allow for IEP Teams to review and revise an IEP as needed by amending the IEP rather than redrafting the IEP. *See*, Admin Code § 925.24.6; CFR § 300.324(a)(6). They also state that upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated. *See*, Admin Code § 925.24.6; CFR § 300.324(a)(6).

On September 20, 2018, an IEP meeting was held where decisions were made regarding a transition plan from homebound services back to school. On September 24, 2018, Parent emailed Guidance Counselor to request a copy of the IEP that the District wanted to put in place. On September 25, 2018, Parent sent an email requesting a copy of the IEP from the meeting held on September 20, 2018. The same day, the Educational Diagnostician emailed the Parent a copy of the IEP and stated that an IEP revision meeting would need to be held to revise the IEP to align to the classes discussed at the IEP team meeting held on September 20, 2018. In this case, Parent was not provided with a revised copy of the IEP with the amendments incorporated. For this reason ***I find a violation of Part B of the IDEA and corresponding State regulations regarding IEP amendments.***

C. Denial of FAPE and Failure to Provide Counseling Services Required by 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. The May 16, 2016 IEP states that individual counseling services will be provided once per week for 30 minutes from May 4, 2016 through June 10, 2016, as well as from August 26, 2016 through May 3, 2017. The November 22, 2016 prior written notice states that individual counseling services will be provided once per week for 30 minutes for the duration of the IEP. It is important to note that the November 22, 2016 IEP expired on November 21, 2017 and the IEP Team did not meet again until March 5, 2018 so Student should have continued to receive at least the same amount of counseling services as indicated in the expired IEP. The March 5, 2018 prior written notice and IEP state that individual counseling services will be provided once per week for 30 minutes from March 5, 2018 through March 4, 2019 as do the June 11, 2018, and September 20, 2018 prior written notice documents. There is no evidence that the District provided counseling services to Student.

The centerpiece of the IDEA’s delivery system for students with disabilities is the IEP. *See Honig v. DOE*, 484 U.S. 305, 311 (1988). As such, in order to satisfy the requirements of the IDEA, the instruction and services provided to the student *must* comport with the student’s IEP. Although the IEP and prior written notice documents indicate that counseling services would be provided in the general education setting, it is undisputed that Student was receiving homebound instruction during this time due to depression and anxiety. Since the IEP Team identified counseling services as an area of need, and the need area were preventing Student from attending school, it follows that the District should have been providing the documented counseling services in order to help the Student transition back to the High School. ***Therefore, because the counseling services indicated in the IEPs and prior written notice documents were not provided, I find a denial of FAPE to Student.***

D. Determination of Eligibility and IEP Development

State and federal regulations implementing the IDEA require the IEP Team to document the IEP Team's discussion of the eligibility determination in the evaluation report. *See*, 14 DE Admin Code § 925.6.1 CFR § 300.306 The District is also required to provide prior written notice when it proposes to change the identification or evaluation of a child. *See*, 14 DE Admin Code § 926.3.0; C.F.R. § 300.503. Both the most recent evaluation summary report from November 16, 2016 and the prior written notice from November 22, 2016 document that the student is a student with a learning disability. The ESR states, "Based on the data presented, the IEP Team agreed that Student meets eligibility in all under Emotional Disability, Learning Disability, and Other Health Impaired: ADHD. The IEP agreed the educational classification of Learning Disability best describes Student's educational needs at this time." The prior written notice also states Student is eligible as a student with a learning disability.

State and federal regulations implementing the IDEA require the IEP Team to consider the results of the most recent evaluation of a child in developing the IEP. *See*, 14 DE Admin Code § 925.24.1.3; CFR§300.324 (a)(iii) . The most recent March 5, 2018 IEP lists Other Health Impairment as Student's primary disability which is inconsistent with the most recent ESR. Similarly, the prior written notice document from the March 5, 2018 IEP Team meeting indicates that Student has a learning disability in the following areas: math calculation, math reasoning, reading comprehension, vocabulary, basic reading, and written expression. The November 16, 2016 ESR is consistent except that a learning disability in vocabulary is not a valid eligibility category. *See*, 14 DE Admin Code § 925.9.1.1; CFR§300.309. In addition, the ESR documents a learning disability in reading fluency but the prior written notice does not. The most recent ESR and IEP are inconsistent with respect to Student's educational classification. ***For these reasons, I find a procedural violation of the IDEA and corresponding state and federal regulations.***

E. Parent Participation at IEP Team Meetings

State and federal regulations require LEAs to ensure parents are afforded an opportunity to participate in IEP team meetings related to the identification, evaluation, and educational placement of the student, and the provision of FAPE to the student. Parents are entitled to certain procedural safeguards, including the provision of written notice no less than 10 school days prior to an IEP team meeting concerning their child. The notice must further include specific provisions, including the purpose, time, and location of the meeting, and who will be in attendance. *See*, 34 C.F.R. § 300.322(a); 14 DE Admin Code § 925.22.0.

In this case, the Parent received written notice on December 12, 2017 for an IEP meeting to be held on December 19, 2017. An IEP Team assembled on December 19, 2017 and the homebound instructor called Parent to request Parent's participation. Parent asked that the meeting be rescheduled. The District failed to properly notice the meeting. On June 1, 2018, Parent and Student were provided notice for an IEP meeting scheduled for June 11, 2018. Although the parent attended the meeting via phone, there is no evidence that Parent or Student signed documentation to waive their rights to 10 school days prior notice. On September 11, 2018, the District provided notice of

a September 20, 2018 IEP meeting to Parent and Student via phone. There is no evidence that written notice was provided and it was not timely. Additionally, there is no evidence that Parent or Student signed documentation to waive their rights to 10 school days prior notice. As a result, Parent was denied her procedural safeguards. ***For the reasons stated, I do find a violation of Part B of the IDEA and corresponding State regulations regarding the provision of written notice to parents prior to an IEP Team meeting.***

F. Transfer of Parental Rights at Age of Majority

State and federal regulations require local education agencies (LEA) to provide notice to parents and their children that parental rights are transferred to the child at the age of majority. *See*, Admin Code § 926.20.0; CFR § 300.320.520. Delaware regulations require the IEP Team to discuss the potential need for an educational representative during the transfer of rights at the age of majority review, and annually thereafter. *See*, Admin Code § 926.20.1. The District did not complete the Educational Representative After Attainment of Age 18 form. ***For the reason stated, I do find a violation of Part B of the IDEA and corresponding State regulations regarding the transfer of parental rights at the age of majority.***

G. Annual Review of IEP

State and Federal regulations require the IEP Team to review the child's IEP at least annually. *See*, Admin Code § 925.24.7; CFR § 300.324. The November 22, 2016 IEP had an end date of November 21, 2017. The IEP annual review was not conducted and a new IEP developed until March 5, 2018. ***For the reason stated, I do find a violation of Part B of the IDEA and corresponding State regulations regarding the review and development of the IEP.***

H. Prior Written Notice

State and federal regulations require LEAs to provide written notice to the parents of a student with a disability no less than 10 school days before the local education agency proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the student. The notice must contain several provisions, including, but not limited to, a written description of the proposed or refused action, a written explanation of why the action is proposed or refused, and a written description of other options the IEP team considered, and why those options were rejected. *See*, Admin Code §926.3.0; 34. C.F.R. § 300.503. In this case, the IEP Team met on March 5, 2018 to develop the IEP. The initiation date on the IEP is March 5, 2018. There is no evidence that Parent waived her right to 10 school days notice before implementing the IEP. ***As a result, I find a violation of Part B of the IDEA and corresponding State regulations regarding the provision of prior written notice.***

On September 20, 2018, an IEP meeting was held where decisions were made regarding a transition plan from homebound services back to school. On September 24, 2018, Parent emailed Guidance Counselor to request a copy of the IEP that the District wanted to put in place. On September 25, 2018, Parent sent an email requesting a copy of the IEP from the meeting held on September 20, 2018. The same day, the Educational Diagnostician emailed the Parent a copy of the IEP and stated that an IEP revision meeting would need to be held to revise the IEP to align to

the classes discussed at the IEP team meeting held on September 20, 2018. Parent attempted several times to express her disagreement with the proposals identified in the prior written notice within the 10 day period. The District attempted to schedule an IEP meeting once to revise the IEP. The District should have scheduled an IEP meeting within a timely manner to address concerns of Parent. ***As a result, I find a violation of Part B of the IDEA and corresponding State regulations regarding the intent of the provision of prior written notice to Parents allowing them 10 days to disagree before implementation of the proposal/s made by the District.***

I. Revision of IEP Regarding ESY Services

State and federal regulations allow for IEP Teams to review and revise an IEP as needed by amending the IEP rather than redrafting the IEP. *See*, Admin Code § 925.24.6; CFR § 300.324(a)(6). The June 11, 2018 prior written notice documents that the IEP Team determined that Student was eligible to receive ESY services, the IEP document was not revised to reflect this decision. Furthermore, the IEP does state that the IEP Team would reconvene in May, 2018 to make a determination regarding ESY and the IEP Team did not meet until June, 2018. ***For these reasons, I find a procedural violation of the IDEA and corresponding state and federal regulations.***

CORRECTIVE ACTION

School Level Corrective Action

1. In order to satisfy state requirements for homebound instruction, please provide the appropriate documentation from medical professional/s on or before **January 30, 2019**.
2. Since the District did not provide counseling services as indicated in the IEP, the District will calculate and submit the number of hours owed to Student from October 17, 2017 to present, as well as a description of how the number of hours were calculated. The District will submit a plan for delivering the compensatory counseling services, including a timeline for service delivery and how the services will be provided (e.g. School Psychologist, School Counselor, Contracted Counselor, Reimbursement to Parent for private counseling). This plan must be submitted to Director of the Exceptional Children's Resources on or before **March 1, 2019**.
3. Convene an IEP Team meeting to determine appropriate eligibility and submit the notices of meeting, eligibility summary report, revised IEP, and prior written notice to Director of the Exceptional Children's Resources on or before **March 1, 2019**.
4. Convene an IEP Team meeting to develop an appropriate IEP based on Student's needs and correctly document the placement decision of the IEP Team. The IEP Team must also discuss CTE requirements and transfer of rights at the age of majority. District must submit the notices of meeting, revised IEP, Educational Representative After Attainment of Age 18 form, and prior written notice documents to Director of the Exceptional Children's Resources on or before **March 1, 2019**.

District Level Corrective Action

1. District must provide professional development to all Educational Diagnosticians in the District regarding IEP development and service delivery. This professional development must include the following topics:
 - a. Requirements and required documentation for homebound instruction
 - b. IEP revisions and appropriately documenting revisions
 - c. Documentation in the IEP and prior written notice and provision of related services
 - d. Eligibility determination
 - e. Notice of meetings
 - f. Transfer of parental rights at age of majority
 - g. Annual review of the IEP

District will provide evidence of this plan to the Director of the Exceptional Children's Resources on or before **February 1, 2019**. 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 by **February 15, 2019**.

By: _____