

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 19-05 (December 21, 2018)

On October 30, 2018, the Educational Surrogate Parent (“ESP”) and the Educational Surrogate Parent Coordinator from Parent Information Center (“ESP Coordinator from PIC”) 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 procedural safeguards to Student. 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 the ESP, ESP Coordinator from PIC, and District’s staff, and documents provided by the ESP and the District. Interviews were conducted with the ESP, ESP Coordinator from PIC, and District staff.

COMPLAINT ALLEGATIONS

The complaint alleges the District violated Part B of the Individuals with Disabilities Education Act (“IDEA”) and corresponding state and federal regulations as follows:

1. The District failed to provide timely and proper notice of Student’s Individualized Education Program (“IEP”) Team meetings.
2. The District failed to include the ESP in a temporary placement agreement and develop or adopt Student’s IEP within sixty (60) days of Student’s initial attendance.
3. The District failed to invite the District’s transition specialist to the IEP Team meeting upon request by the ESP.
4. The District denied the ESP participation in the development of Student’s special education program and placement by failing to timely convene an IEP Team meeting when requested by the ESP.

FINDINGS OF FACT

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

1. Student is seventeen (X) years of age, and currently attending the X (Xth) grade at High School (“the High School”).

2. Student is identified with a learning disability pursuant to the disability category defined in 14 DE Admin Code § 925.6.11. Student is also identified with a secondary disability of other health impairment 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.* Student is further diagnosed with medical condition.
3. Student is also in the legal custody of the Department of Services for Children, Youth, and their Family, through the Division of Family Services. Thus, an educational surrogate parent is appointed to represent Student pursuant to 14 DE Admin Code § 926.19 and 34 C.F.R. § 300.519 on all matters related to the provision of a free, appropriate public education (“FAPE”) to Student. In Delaware, the Educational Surrogate Program is implemented through the Parent Information Center.
4. During the 2017 – 2018 school year, Student attended school in District 1 and received special education and related services. The IEP contained goals and objectives to address reading comprehension, written expression, reading fluency, word recognition, and math calculations. The IEP outlined Student’s needs for specialized instruction, supports, services, and accommodations, and placement in the general education setting.
5. On September 10, 2018, Student moved to a foster home in X County within the District.
6. On September 12, 2018, Student was registered at the High School within the District. A partial copy of Student’s IEP from District 1 was provided to the High School upon registration by the foster parents.
7. District 1 reportedly sent Student’s IEP and special education records to the High School on September 13, 2018, in response to the High School’s request for records. The records were received by the High School and delivered to the registrar’s office.
8. At the time, Student was receiving treatment through a short term hospitalization, and was not discharged until September 24, 2018.
9. On September 25, 2018, the ESP Coordinator from PIC sent an E-mail to the Educational Diagnostician to advise that Student has an ESP. The E-mail included the name of the ESP and the date of the ESP’s appointment, as well as a copy of the letter appointing the ESP with the contact information.
10. On September 26, 2018, the ESP called the Educational Diagnostician and requested an IEP Team meeting be scheduled for Student. The Educational Diagnostician responded an IEP Team meeting would be scheduled when the High School received Student’s special education records.
11. The Educational Diagnostician was unaware Student’s special education records were already received by the High School and in the registrar’s office.
12. Student’s first day of attendance at the High School was September 27, 2018.

13. For students with IEPs who transfer from one Delaware school district to another, state and federal regulations require the student to be temporarily placed in the educational setting that appears to be most suited to the student's needs based on mutual agreement of the parents or guardians and the receiving school district. The agreement must be documented by signatures of the parent, ESP, or guardian and the receiving district on a temporary placement form, or the cover page of the IEP. Within sixty (60) days of the student's initial attendance, the receiving school district then must adopt the student's IEP from the previous district at an IEP Team meeting, or develop, adopt, and implement a new IEP. *See*, 34 C.F.R. § 300.323(e); 14 DE Admin Code § 925.23.4.1.
14. There is no evidence the District and ESP conferred and agreed to temporarily place Student in a setting most suited to Student's needs in the manner required by 34 C.F.R. § 300.323(e); 14 DE Admin Code § 925.23.4.1. There is no evidence of a temporary placement agreement signed by the ESP and the District
15. The ESP contacted the Educational Diagnostician on October 5, 2018 and requested an IEP Team meeting be scheduled for Student. The ESP also requested the Educational Diagnostician invite the District's transition specialist to attend the IEP Team meeting, as well as Student's child attorney.¹ The ESP provided the name of Student's child attorney and contact information.
16. The School scheduled an IEP Team meeting for October 18, 2018 for the purpose of reviewing Student's IEP within sixty (60) days of Student's initial attendance pursuant to 34 C.F.R. § 300.323(e) and 14 DE Admin Code § 925.23.4.1
17. State and federal regulations require schools to provide written notice at least ten (10) school days prior to an IEP Team meeting to provide the purpose, time, and location of the meeting, and who will be in attendance. *See*, 14 C.F.R. § 300.322; 14 DE Admin Code § 925.22.1.1.
18. However, the ESP did not receive prompt written notice of the October 18, 2018 IEP Team meeting. On October 8, 2018, the ESP sent an E-mail to the Educational Diagnostician requesting the written notice of IEP Team meeting. The Educational Diagnostician reported receipt of the E-mail.
19. On October 10, 2018, the ESP Coordinator from PIC sent an E-mail to the Educational Diagnostician advising of the intention to attend the IEP Team meeting. The ESP Coordinator from PIC also requested the Educational Diagnostician send a draft of the IEP, if prepared, the current IEP, and the written notice of meeting.

¹ In Delaware, children in foster care are appointed a child attorney to represent their best interests in the Family Court dependency-neglect custody proceedings pursuant to Title 29 Del. C. § 9007A.

20. In the October 10, 2018 E-mail, the ESP Coordinator from PIC further asked the Educational Diagnostician to confirm whether Student's social worker was attending the IEP Team meeting, as well as Student's foster parents, and the District's transition specialist.
21. As of October 15, 2018, the ESP Coordinator from PIC had not received a response, and sent the same E-mail request to the Educational Diagnostician a second time.
22. On October 15, 2018, the Educational Diagnostician responded to the ESP Coordinator from PIC by E-mail indicating the IEP Team meeting would not proceed on October 18, 2018, and would need to be rescheduled.
23. The Educational Diagnostician reported the High School had not received enough information about Student to develop an IEP at the October 18, 2018 meeting. Therefore, the educational diagnostician did not send written notice of the IEP Team meeting and advised it would be rescheduled.
24. On October 18, 2018, the ESP Coordinator from PIC sent an E-mail to the High School staff providing three (3) proposed dates to reschedule Student's IEP Team meeting. The ESP Coordinator from PIC copied the ESP, Student's social worker, and the District's transition specialist on the E-mail.
25. The School rescheduled the IEP Team meeting for October 31, 2018 for the purpose of reviewing Student's IEP within sixty (60) days of Student's initial attendance pursuant to 34 C.F.R. § 300.323(e) and 14 DE Admin Code § 925.23.4.1.
26. On October 19, 2018, the ESP Coordinator from PIC sent an E-mail to the Educational Diagnostician requesting confirmation of the October 31, 2018 IEP Team meeting date, as well as a copy of Student's current IEP. Written notice of the October 31, 2018 IEP Team meeting was not provided to the ESP.
27. As of October 21, 2018, the ESP Coordinator from PIC received no response, and in turn, forwarded the E-mail requests to the Senior Director of Pupil Personnel Services requesting intervention and direction on how to proceed.
28. On October 23, 2018, Student's Social Worker sent an E-mail to the Educational Diagnostician and others asking whether the October 31, 2018 IEP Team meeting was moving forward. The High School staff did not respond to the Social Worker.
29. On October 30, 2018, the ESP and ESP Coordinator from PIC filed this complaint with the Department alleging the denial of various procedural safeguards related to Student's IEP Team meeting, and the failure to convene it in a timely manner.
30. The October 31, 2018 IEP Team meeting previously proposed by the Educational Diagnostician was not held, and therefore written notice of IEP Team meeting was not issued.

31. The ESP reported the Educational Diagnostician called on November 5, 2018 and requested proposed dates and times the ESP would be available to attend an IEP Team meeting.
32. On November 9, 2018, the District sent written notice of a November 14, 2018 IEP Team meeting to the ESP describing the purpose of the meeting which was to review Student's IEP within sixty (60) days of Student's initial attendance. The notice of meeting was not sent to the ESP ten (10) school days prior to the scheduled meeting as required by 14 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.1.1.
33. The High School staff reported that Student's special education records were located in the registrar's office sometime in mid-November, and were previously sent by District 1.
34. Student's IEP Team meeting was held on November 14, 2018.
35. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Student's ESP attended and participated in the meeting. The individuals previously requested for inclusion by the ESP were invited to attend the meeting.
36. On November 14, 2018, the IEP Team began developing a new IEP for Student, and revised the data considerations in the IEP, Student's transition services, and annual IEP goals. However, the IEP Team did not finish writing the IEP in its entirety, and agreed to reconvene at a later date to complete it.
37. The District did not propose implementation of the partially developed IEP following the November 14, 2018 meeting because it was not complete and subject to further review and revision. No prior written notice was issued following the November 14, 2018 IEP Team meeting.
38. An IEP Team meeting was scheduled on December 3, 2018 to complete the development and revision of Student's IEP. On November 14, 2018, the District sent timely written notice of the December 3, 2018 IEP Team meeting to the ESP in compliance with 14 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.1.1.
39. On December 3, 2018, the IEP Team completed the development of the IEP, and its implementation dates are December 4, 2018 to December 3, 2019.
40. The December 3, 2018 prior written notice states, in relevant part:
 - (a) Student's educational needs would be met in the general education classroom "A" setting.
 - (b) Student's primary disability classification remains learning disability with a secondary classification of other health impairment.

- (c) Student's IEP will include goals in reading comprehension, written expression, reading fluency, math calculation, and math problem solving.
- (d) Instruction for managing Student during a medical emergency to be added to the IEP.
- (e) Student will have access to assistive technology.

CONCLUSIONS

A. Written and Timely Notice of IEP Team Meeting Not Provided

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*, 14 C.F.R. § 300.322; 14 DE Admin Code § 925.22.1.1.

In this case, the ESP began the process of requesting an IEP Team meeting on Student's behalf on September 26, 2018. The District tentatively scheduled the IEP Team meeting for October 18, 2018 and later canceled it on October 15, 2018 claiming the High School did not have enough information to develop Student's IEP on October 18, 2018.

The District then rescheduled the IEP Team meeting for October 31, 2018, but failed to send written formal notice of the IEP Team meeting to the ESP. The ESP filed the complaint with the Department on October 30, 2018, and the October 31, 2018 IEP Team meeting did not proceed.

The ESP and ESP Coordinator from PIC contacted the Educational Diagnostician several times requesting written notice of the IEP Team meetings, confirmation of the scheduled dates, and Student's draft IEP, if available, and current IEP. The evidence demonstrates the District failed to respond to these reasonable requests in a timely manner.

The District scheduled the IEP Team meeting for November 14, 2018, and provided written notice of the meeting to the ESP on November 9, 2018. While the notice contained the information required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22, it was not provided to the ESP ten (10) school days prior to the IEP Team meeting. **For the reasons stated, 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.**

B. No Evidence of Temporary Placement Agreement Between the ESP and District or Development of IEP Within Sixty (60) Day Timeline

If a student with a disability, who had an IEP that was in effect in a previous district in the same state, transfers to a new district in the same state, and enrolls in a new school within the same school year, the new district must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous district, until the new district either adopts the child's IEP from the previous district or develops, adopts, and implements a new IEP. *See*, 34 C.F.R. § 300.323(2)(e); 14 DE Admin Code § 925.23.4.1.

For students with IEPs who transfer from one Delaware school district to another, state and federal regulations require the student to be temporarily placed in the educational setting that appears to be most suited to the student's needs based on mutual agreement of the parents or guardians and the receiving school district. The agreement must be documented by signatures of the parent, ESP, or guardian and the receiving district on a temporary placement form, or the cover page of the IEP. Within sixty (60) days of the student's initial attendance, the receiving school district then must adopt the student's IEP from the previous district at an IEP Team meeting, or develop, adopt, and implement a new IEP. *See*, 34 C.F.R. § 300.323(e); 14 DE Admin Code § 925.23.4.1.

In this case, there is no evidence the District and ESP conferred and agreed to temporarily place Student in a setting most suited to Student's needs in the manner required by 34 C.F.R. § 300.323(e); 14 DE Admin Code § 925.23.4.1. There is no evidence of a temporary placement agreement signed by the ESP and the District.

In addition, Student's initial day of attendance at the High School was September 27, 2018, following Student's discharge from a short term hospitalization on September 24, 2018. The IEP Team began the development and review of Student's IEP at the November 14, 2018 IEP Team meeting, but did not conclude the full development of the IEP until the December 3, 2018 IEP Team meeting. Therefore, the District did not develop or adopt an IEP for Student within sixty (60) days of Student's initial date of attendance. **For the reasons stated, I find a violation of Part B of the IDEA and state and federal regulations related to the development or adoption of Student's IEP within sixty (60) days of Student's initial attendance, and the adoption of a temporary placement agreement.**

C. Failure to Invite District Transition Specialist to IEP Team Meeting

A school district must ensure the IEP Team of a child with a disability includes certain members, and at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. *See*, 34 C.F.R. § 300.321(a)(6); 14 DE Admin Code § 925.21.1.6.

The IEP Team shall provide notice to the parent, and if appropriate, the child, they may request the presence of any teacher, paraprofessional, and any additional staff members at an IEP Team for the child. *See*, 14 DE Admin Code § 925.22.2.2.1.

In this case, the ESP and the ESP Coordinator from PIC requested the District to request the presence of the District's Transition Specialist at the October 18 and 31, 2018 IEP Team meetings. Upon researching the facts of this case, it was found that the District did eventually invite the Transition Specialist. **For the reasons stated, I do not find a violation of state regulation related to the ESP's request for invitation of other staff members at the IEP Team meeting.**

D. ESP Participation Was Afforded at IEP Team Meetings

The complaint alleges the District denied the ESP participation in the development of Student's special education program and placement by failing to timely convene an IEP Team meeting when requested by the ESP. Clearly, the District should have convened Student's IEP Team to develop or adopt an IEP within sixty (60) days of Student's initial attendance. This regulatory violation under 34 C.F.R. § 300.323(e) and 14 DE Admin Code § 925.23.4.1 is previously addressed in this decision. The ESP was otherwise afforded participation in Student's November 14 and December 3, 2018 IEP Team meetings. **For the reasons stated, I do not find a violation of state regulation related to the ESP's participation in IEP Team meetings.**

E. Prior Written Notice Not Provided

Prior written notice must be provided to the parents of a child with a disability no less than 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, prior written notice was not provided to the ESP proposing the revisions to Student's IEP made at the November 14, 2018 IEP Team meeting. The IEP revisions made on November 14, 2018 included changes to the data consideration, transition services, and IEP goals. The revisions constitute proposed changes to Student's program outlined in the IEP, thus warranting a prior written notice. In addition, the IEP Team proposed to not implement these changes yet because the IEP Team wanted to meet again to finish developing the IEP. This should have also been recorded in a prior written notice document. **For the reasons stated, I find a violation of Part B of the IDEA and state and federal regulations related to the provision of prior written notice.**

F. Confidentiality of Personally Identifiable Information

The IDEA and implementing state and federal regulations set forth the requirements for confidentiality of student records requiring each District to take reasonable steps to ensure the confidentiality of personally identifiable information. *See*, 34 C.F.R. § 300.623; 14 DE Admin Code § 923.23.0.

In this case, District 1 sent Student's special education records by certified mail to the District on September 13, 2018. Student was registered at the High School on September 12, 2018 and started special education classes at the High School on September 27, 2018. The foster parent provided the High School with a partial IEP thereby facilitating the registration process. However, the High School staff reported it was not until mid-November that Student's records were found in the registrar's office. The unavailability and misplacement of Student's records caused delays in scheduling Student's IEP Team meeting, but also jeopardized the confidentiality of Student's personally identifiable information through the misplacement of the records. **For the reasons stated, I find a procedural violation of Part B and state and federal regulations related to the confidentiality of personally identifiable information.**

CORRECTIVE ACTION

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

Student Level Corrective Actions

1. The District will calculate and submit the number of compensatory education hours owed to Student from November 26 (date District should have held 60 day IEP meeting) to December 4 (date new IEP was implemented).

It is not clear what portions of the IEP the District was implementing from September 27 through November 25, as the District did not have complete records. Therefore, the District must reflect on what was being implemented and what the Student's needs were based on the IEP developed in December, calculate and submit the number of compensatory education hours owed to the Student.

The District must provide a description of how the number of hours were calculated. The District will submit a plan for delivering the compensatory education hours, including a timeline for service delivery and how the services will be provided (e.g. Reimbursement for private tutoring, additional hours after school etc.). This plan must be submitted to Director of the Exceptional Children's Resources on or before **January 31, 2019**.

District Level Corrective Actions

1. On or before **January 31, 2019**, the District shall review School policies, procedures and practices and revise as necessary to ensure timely parent notification of IEP Team meetings, proper usage of prior written notices, adherence to sixty (60) day review of

transferring students' IEPs, and proper handling of special education paperwork of transfer students. As necessary, the District shall develop a written procedure to ensure that:

- a) Parent notifications and prior written notices are properly implemented prior to and during the IEP Team meeting process.
- b) School staff implement the regulations relating to the sixty (60) day IEP review for transfer students.
- c) Student confidentiality is protected when receiving transfer records.

Documentation evidencing completion of these actions shall be submitted to the Director of Exceptional Children Resources on or before **February 28, 2019**.

- 2. The District shall further provide professional development to the special education staff within the School to ensure knowledge and compliance according to state and federal regulations with providing timely parent notification, prior written notice, sixty (60) review of transferring students' IEPs, and confidentiality of students' records. 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, 2019**. 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 1, 2019**.

By: _____
Assigned Investigation