

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 19-06 (March 5, 2019)

On January 4, 2019, Parent filed a complaint with the Delaware Department of Education (“Department”). The complaint alleges the School District (“District 1”) and the School District (“District of Residence”) violated state and federal regulations concerning the provision of a free, appropriate public education to Student (“FAPE”). The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the Department’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records, staff correspondence, and documentation provided by Parent, District 1, and District of Residence. Interviews were conducted with Parent and school district staff.

ONE YEAR LIMITATIONS PERIOD

In accordance with the Individuals with Disabilities Education Act (“IDEA”) and corresponding state and federal regulations, the complaint must allege violations that occurred not more than one (1) year prior to the date the Department received 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 January 4, 2019. Therefore, the Department’s findings address alleged violations from January 4, 2018 to the current. In addition, the complaint decision is limited to the specific issues raised by Parent in the complaint. To the extent certain facts are not included in the decision, the facts were deemed not relevant or material to address the specific issues stated in Parent’s complaint.

COMPLAINT ALLEGATIONS

Parent alleges District 1 and District of Residence have not provided Student with the appropriate services and supports, and have failed to provide Student with FAPE in violation of Part B of the IDEA and corresponding state and federal regulations.

FINDINGS OF FACT

1. Student is four (X) years of age and resides within the District of Residence. Student was attending a private preschool (“the preschool”) located within District 1.
2. The District of Residence and District 1 are parties to a Memorandum of Understanding, dated May 2003, among the County school districts related to the screening, identification, evaluation, and provision of FAPE to children attending private preschools within County (“the MOU”).

3. The MOU defines the “district of residence” as the district in which the child and family live, and the “district of service” as the district in which the child is enrolled in a preschool or child care facility.
4. Pursuant to the MOU, the district of service is responsible for the screening of preschool children, special education evaluations, and child find. The district of service is also responsible for providing FAPE to eligible children with disabilities.
5. The District of Residence and District 1 shared that the County school districts have a mutual understanding that referrals and evaluations for autism are the responsibility of the districts of residence. This practice is not documented or addressed in the MOU.

Relevant Facts from the 2017-2018 School Year

6. In September 2017, the preschool staff raised concerns regarding Student’s behavior in the preschool setting, and contacted District 1, Student’s district of service. A referral was made to District 1’s child find coordinator.
7. On October 9, 2017, District 1 provided Parent with prior written notice proposing to evaluate Student as required by 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0. Parent signed a waiver of the ten (10) school day notice period.
8. On October 10, 2017, Parent provided District 1 with the signed written consent to evaluate Student and determine Student’s eligibility for special education and related services.
9. Student’s psychoeducational assessments were completed on October 2 and 27, 2018, including Parent and teacher behavior raters and classroom observations. Student’s speech and language assessment was completed on November 2, 2017.
10. On December 7, 2017, the District sent written notice of a December 11, 2017 IEP Team meeting to Parent to determine whether Student was eligible for special education and related services. Parent signed a waiver of the right to receive (10) school days written notice of the meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
11. On December 11, 2017, Student’s IEP Team meeting was held, and included all members required by 34 C.F.R. § 300.306 and 14 DE Admin Code § 925.6.0. The team reviewed multiple sources of information, including the evaluation results, information provided by Parent, and observations of Student. The team concluded Student did not have a disability requiring the provision of special education and related services under Part B of the IDEA.
12. Parent attended and participated in the December 11, 2017 IEP Team meeting. Parent signed the Evaluation Summary Report in agreement with the eligibility decision.
13. The December 11, 2017 Evaluation Summary Report documents the eligibility decision, and states, in relevant part:

- (a) Student was highly intelligible during the speech and language assessment with age appropriate articulation.
 - (b) Student exhibited strengths in cognitive, language, and adaptive skills.
 - (c) Student demonstrated problem solving skills within the high range compared to his peers with evenly developed abilities to solve problems with words, hands, and eyes. Student understood ten (10) colors, two (2) letters, two (2) numbers, and four (4) size comparisons, and nine (9) shapes reflecting a performance level consistent with same aged peers.
 - (d) A screener of social- emotional functioning suggested behavioral concerns in the areas of hyperactivity, aggression, anxiety, somatization, and behaviors that are atypical.
 - (e) While Student exhibited a delay in the area of social-emotional skills with externalizing behavior, it did not impact Student's academic progress.
 - (f) Student does not meet the eligibility criteria for the developmental delay classification and his language, cognitive, and adaptive scores are consistent with peers.
 - (g) Parents were encouraged to share the evaluation results with the professionals working with Student.
14. The Evaluation Summary Report includes recommendations to assist Student with home and school communication, behavioral supports, school readiness, and social skills.
 15. Parent was corresponding with the preschool on scheduling appointments for Student to be seen at A.I. DuPont Children's Hospital, Children's Hospital of Philadelphia, and Mid-Atlantic Behavioral Health.
 16. During the spring of 2018, Student's incidents of physical aggression towards adults and other students escalated jeopardizing Student's continued enrollment in the private preschool.
 17. The preschool sent E-mails throughout the year to Parent regarding behavior incidents and concerns, but neither District 1 nor District of Residence were notified of the escalating behaviors. During the investigation, District 1 staff reported after the December 2017 eligibility decision, there was no further interaction with Student until December 2018 when Parent requested an evaluation for autism.

Relevant Facts from the 2018-2019 School Year

18. Student continued to attend the private preschool beginning the 2018 -2019 school year.
19. On December 14, 2018 Parent called District of Residence's child find coordinator and requested another evaluation of Student due to Student's continuing behaviors. Parent was told while Student was attending a private preschool within District 1, the district of service was District 1 and responsible for the evaluation. District of Residence's child find coordinator then sent an E-mail to District 1's child find coordinator notifying District 1 of Parent's request for an evaluation.
20. On December 17, 2018, Parent also sent an E-mail to District 1's coordinator requesting an evaluation of Student. An early childhood referral form was completed by District 1.
21. Later that day, District 1's child find coordinator spoke with Parent by telephone, and Parent requested Student be evaluated for autism.
22. District 1's coordinator then sent an E-mail to District of Residence relaying Parent's specific request for an evaluation for autism.
23. As mentioned, the District of Residence and District 1 reported that the County school districts have mutual understanding that referrals and evaluations for autism are the responsibility of the district of residence.
24. On December 18, 2018, District of Residence's child find coordinator spoke with Parent regarding the requested evaluation for autism.
25. Parent also completed a referral to the Parent Information Center on December 18, 2018 requesting a parent consultant.
26. On December 21, 2018, District of Residence provided Parent with prior written notice proposing to evaluate Student for autism in compliance with 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0.
27. On January 3, 2019, Parent provided the signed written consent to evaluate to District of Residence.
28. On January 4, 2019, Parent filed this complaint with the Department alleging District 1 and District of Residence violated Part B of the IDEA and implementing regulations with respect to Student.
29. On January 9, 2019, District of Residence completed the first part of Student's evaluation for autism. The second part of the evaluation was scheduled for January 15, 2019 for the evaluator to observe Student in the private preschool setting.

30. However, Parent informed District of Residence's coordinator on January 14, 2019 that Student was no longer permitted to attend the private preschool due to Student's behaviors.
31. On January 16, 2019, District of Residence's coordinator and Parent discussed the importance of Student being observed in the preschool setting to collect data for the autism evaluation. Parent reported the preschool was not being cooperative and would not complete the behavior raters for the autism evaluation. Parent was going to tour new preschools and explore other programs the next day. District of Residence's coordinator also sent Parent updated behavior raters to complete.
32. Parent promptly enrolled Student in a new preschool program in a private facility and District of Residence completed the second part of Student's evaluation at the new facility.
33. On February 7, 2019, the IEP Team meeting to review the autism evaluation and determine Student's eligibility for special education and related services was held, and included all members required by 34 C.F.R. § 300.306 and 14 DE Admin Code § 925.6.0. Parent attended and participated in the February 7, 2019 meeting.
34. The team reviewed multiple sources of information, including the evaluation results, information provided by Parent, behavior rates, and observations of Student. The team concluded Student has a disability under the classification of developmental delay pursuant to 14 DE Admin Code § 925.6.7. Student was thus found eligible for the receipt of special education and related services under Part B of the IDEA.
35. Student is receiving special and education related services through an IEP and attending the half day preschool program at District of Residence School.

CONCLUSIONS

A. *No Denial of Free, Appropriate Public Education*

Neither District 1 nor District of Residence had a duty to provide special education and related services to Student during the 2017 –2018 school year. In October 2017, District 1 promptly responded to the behavior concerns raised by Student's preschool by initiating the process for a special education evaluation under Part B of the IDEA. District 1 provided timely prior written notice to Parent proposing to evaluate Student and promptly sought parental consent to evaluate.

State and federal regulations require the school district to conduct a full and individual initial evaluation prior to the initial provision of special education and related services. An initial evaluation must be completed in "a manner to preclude undue delay." *See*, 34 C.F.R. § 300.301(c) and 14 DE Admin Code § 925.2.1. Within forty-five (45) school days or ninety (90) calendar days, whichever is less, of receiving parental consent, the initial evaluation must be conducted, and the child's eligibility must be determined at a meeting convened for that purpose. *See*, 14 DE Admin Code § 925.2.3.

District 1 received the parental consent to evaluate on October 9, 2017, and the evaluation and eligibility decision was required to be completed on or December 14, 2017. District 1 completed the psychoeducational evaluation on October 2 and 27, 2017 and the speech and language evaluation on November 2, 2017. The IEP Team meeting was held on December 11, 2017 to determine Student's eligibility in compliance with the required timeline. District 1 also complied with state and federal regulations related to the provision of prior written notice, notice of meeting, and related procedural safeguards to ensure adequate parent participation in the eligibility process and notice to Parent of dispute resolution options.

Similarly, when Parent contacted District of Residence in December 2018 to request an evaluation for autism, District of Residence honored Parent's request and responded. On December 21, 2018, District of Residence provided timely prior written notice proposing to evaluate Student and requested parental consent to evaluate Student. District of Residence received the parental consent to evaluate on January 3, 2019. The autism evaluation was completed, and the IEP Team meeting to determine Student's eligibility was held on February 7, 2019 in compliance with the required timeline. The IEP Team included all members required by 34 C.F.R. § 300.306 and 14 DE Admin Code § 925.6.0, and Parent attended and participated in the meeting. Student was found eligible for the receipt of special education and related services under Part B of the IDEA in compliance with state and federal regulations. Student is now receiving special and education related services through an IEP at District of Residence School.

The IDEA and corresponding Delaware law requires schools to establish and implement ongoing evaluation procedures consistent to identify, locate and evaluate all children residing within the confines of the District and who are in need of special education and related services. *See*, 34 C.F.R. § 300.111 and 14 DE Admin Code § 923.11.0.

District 1 and District of Residence complied with child find obligations and promptly agreed to conduct special education evaluations while providing Parent with prior written notice and seeking parental consent to evaluate Student in a timely and efficient manner. ***For these reasons, I find no violation of Part B of the IDEA and corresponding state and federal regulations regarding the provision of a free, appropriate public education to Student.***

CORRECTIVE ACTION

The Delaware Department of Education is required to ensure that corrective actions are taken when violations of the requirements are identified through the complaint investigation process. *See*, 14 DE Admin Code § 923.51.3.3. In this case, no violation of Part B of the IDEA was identified. Therefore, no further action by the Department shall be taken.

By: _____
Assigned Investigator