

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 19-07 (March 1, 2019)**

On January 2, 2019, Parent filed a complaint with the Delaware Department of Education (“the Department”). The complaint alleges the District (“the District”) violated Part B of the Individuals with Disabilities Education Act (“IDEA”) and implementing state and federal regulations with respect 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, staff correspondence, and relevant documentation provided by Parent and the District related to the issues identified in the complaint. Interviews were also conducted with Parent and relevant District staff.

**INVESTIGATION AND DECISION**

The complaint decision is limited to the specific issues raised by Parent in the complaint. The complaint decision focuses upon an August 23, 2018 IEP Team meeting concerning Student and the provision of physical therapy services provided to Student. All records and information provided by Parent and the District were reviewed and considered. To the extent certain facts are not included in the decision, the facts were deemed not relevant or material to address the issues stated in Parent’s complaint.

**COMPLAINT ALLEGATIONS**

The complaint alleges the District violated Part B of the IDEA and implementing state and federal regulations as follows:

1. The District made a unilateral decision for the Deputy Superintendent to attend Student’s August 23, 2018 IEP Team meeting.
2. The Deputy Superintendent allegedly told Parent “parents have no rights” at the August 23, 2018 IEP Team meeting.
3. The District failed to provide physical therapy services to Student at the start of the 2018 - 2019 school year.

**FINDINGS OF FACT**

1. Student is X (X) years of age and enrolled in the X (X) grade at School (“the School”). Student is identified as a student with a disability under the classification of “other health impairment” as defined in 14 DE Admin Code § 925.6.14. Student receives special

education and related services at the School pursuant to the IDEA and 14 Del. C. § 3101 *et seq.*

2. At the time the complaint was filed on January 2, 2019, Student's then current IEP was dated January 10, 2018 to January 9, 2019.
3. Pursuant to the IEP, Student's educational needs are in the areas of self-regulation, self-help, math, letter identification, and letter sounds. Student requires occupational therapy services focusing on gross motor skills, and Student also receives psychological services.
4. The IEP Team determined Student's educational needs could be met in the general education classroom with the supports, accommodations, and services outlined in the IEP.

### **August 23, 2018 IEP Team Meeting**

5. On August 10, 2018, the School sent timely written notice of an August 23, 2018 IEP Team meeting to Parent in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.1. Parent confirmed availability to attend the meeting as per the date, time, and location.
6. The written notice of the August 23, 2018 IEP Team meeting identified the individuals who would be in attendance as required by 34 C.F.R. § 300.321(a) and 14 DE Admin Code § 925.22.1.
7. Parent requested the District's Director of Special Services be excluded from Student's IEP Team meeting.
8. The IEP Team must include a representative of the District who is: (a) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (b) is knowledgeable about the general education curriculum; (c) is knowledgeable about the availability of District resources; and (d) has authority to commit District resources and be able to ensure that whatever services are set out in the IEP will actually be provided pursuant to 34 C.F.R. § 300.321(a)(4) and 14 DE Admin Code § 925.21.0
9. The Director of Special Services would attend Student's IEP Team meeting to fulfill this role, as needed. But, the District deferred to Parent's request, and did not include the Director as a meeting participant. The principal and educational diagnostician were identified as District administrator designees.
10. However, on August 11, 2018, Parent sent the Deputy Superintendent an E-mail requesting monetary reimbursement for Student's vision therapy. At the time, Student was receiving private vision therapy for visual tracking and eye weakness at Parent's expense. Parent's E-mail also advised the Deputy Superintendent of Student's upcoming August 23, 2018 IEP Team meeting.

11. On August 13, 2018, the Deputy Superintendent responded to Parent by E-mail advising the IEP Team would address Parent's request at the August 23, 2018 IEP Team meeting, and the Deputy Superintendent looked forward to meeting Parent.
12. On August 13, 2018, the educational diagnostician also notified the Director of Special Services Parent was requesting another physical therapist be assigned to Student.
13. Given the nature of Parent's requests (i.e., monetary reimbursement and staffing change), the Director of Special Services and the Deputy Superintendent agreed a District level representative would need to attend the August 23, 2018 IEP Team meeting to address Parent's specific requests.
14. On August 22, 2018, the Deputy Superintendent sent Parent an E-mail advising that Parent's request for a change in physical therapy staffing would be addressed at the August 23, 2018 IEP Team meeting.
15. On August 21, 2018, Parent sent an E-mail to the educational diagnostician advising the IEP Team was informed to communicate with the Deputy Superintendent as the District's administrator concerning Student, and not the Director of Special Services.
16. In response, the School Principal sent an E-mail to Parent on August 22, 2018 confirming the Deputy Superintendent would be attending Student's August 23, 2018 IEP Team meeting as the District's representative knowledgeable about the availability of resources.
17. The written notice of the August 23, 2018 IEP Team meeting was amended to add the Deputy Superintendent as a meeting participant.
18. On August 23, 2018, the IEP Team meeting was held and Student's IEP was reviewed and revised. Student's educational needs were discussed and evaluation reports were considered.
19. Parent attended and participated in the August 23, 2018 IEP Team meeting.
20. The IEP Team members included the individuals required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. The IEP signature page confirms the attendance of Parent, the principal, the educational diagnostician, the Deputy Superintendent, regular and special education teachers, the nurse, and the psychologist.
21. Parent consented, in writing, to excuse the occupational therapist from attending Student's IEP Team meeting in compliance with 34 C.F.R. § 300.321(e)(2) and 14 DE Admin Code § 925.21.5.1.
22. On August 23, 2018, the District delivered timely prior written notice to Parent as required by 300 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0 stating, in relevant part:

- (a) A consent form would be provided to Parent to allow the Division of Visual Impairment (“DVI”) to assess the educational impact of Student’s visual needs.
  - (b) Student’s IEP was revised to include opportunities for movement, reinforcement for behavior, and accommodations of chunking assignments and providing additional time. Accommodations were also included to support Student’s visual needs by reducing stimuli and having access to text in close proximity and a slant board.
  - (c) Staffing assignments for physical therapy services were addressed.
  - (d) Parent’s concerns about the District’s staff members attending Student’s IEP Team meeting were discussed.
23. Parent signed the prior written notice on August 23, 2018 and consented to the District’s implementation of the revised IEP in waiver of the ten (10) school day waiting period.
24. After the IEP Team meeting, Parent met in person with the Deputy Superintendent, the principal, and educational diagnostician.
25. During the meeting, Parent questioned the presence and reasons for the attendance of the Deputy Superintendent at the August 23, 2018 IEP Team meeting. In the course of the complaint investigation, Parent explained Parent did not request the Deputy Superintendent to attend Student’s IEP Team meeting. Parent alleged the decision was unilaterally rendered by the District in violation of Part B of the IDEA.
26. The District states the attendance of the Deputy Superintendent at the August 23, 2018 IEP Team meeting was appropriate because:
- (a) The Deputy Superintendent is authorized to commit resources and direct staff changes.
  - (b) Parent requested monetary reimbursement and staffing changes to be considered at the IEP Team meeting.
  - (c) Parent asked the District to exclude the Director of Special Services from Student’s IEP Team meeting.
  - (d) The District bears the ultimate responsibility to have a properly convened IEP Team, including a District administrator or designee authorized to commit resources as required by 14 DE Admin Code § 926.21.0.
  - (e) The Deputy Superintendent fulfilled this role.

27. On August 24, 2018, the Deputy Superintendent sent Parent an E-mail confirming the District would financially provide for the completion of a DVI evaluation prior to reimbursing Parent for private vision therapy services. The Deputy Superintendent also honored Parent's request for a change to the physical therapist staff working with Student.
28. Parent also claims Part B of the IDEA was violated based upon a statement allegedly made by the Deputy Superintendent at the conclusion of the August 23, 2018 IEP Team meeting of the following nature:
  - (a) In the complaint, Parent alleges the Deputy Superintendent stated "Parents have no rights" in an aggressive, harassing, and demeaning tone directed at Parent.
  - (b) In the course of the investigation, Parent told the investigator the Deputy Superintendent said Parent "has no rights as a parent and parents do not get to decide who comes to student IEP meetings".
  - (c) Parent also sent an E-mail to the investigator alleging the Deputy Superintendent said "[Parent] does not dictate to the District who the District can invite to the IEP meeting".
29. The Deputy Superintendent acknowledges making a statement to Parent that parents generally do not have the procedural right to decide which District staff members attend IEP Team meetings on behalf of the District. The educational diagnostician and principal confirmed the Deputy Superintendent made this statement to Parent.
30. On January 3, 2019, the Deputy Superintendent also sent an E-mail to a school board member summarizing that parents may invite any individuals to an IEP Team meeting, but parents do not have the right to dictate which District staff members attend an IEP Team meeting on behalf of the District.
31. Parent was notified of the right to invite other individuals to Student's IEP Team meeting within the written notice of meeting provided to Parent on August 10, 2018. The written notice states Parent may request the presence of any teacher, paraprofessional, or any additional staff members at an IEP Team meeting as required by 14 DE Admin Code § 925.22.2.2.1.
32. In addition, the notice of procedural safeguards provided to Parent states the IEP Team may include, at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate, pursuant to 14 DE Admin Code § 925.21.1.6.
33. Parent was also notified by the Director of Special Services in an August 3, 2018 E-mail that Parent may request other individuals to attend Student's IEP Team meeting. The Director further explained the School can request individuals to attend IEP Team meetings when there are concerns about services of requests made by parents.

### **Provision of Physical Therapy Services**

34. Parent claims the District failed to provide physical therapy services to Student at the start of the 2018 – 2019 school year.
35. Student received physical therapy services during the 2017-2018 school year. Pursuant to 24 *Del. C.* § 2612, the District required a renewed prescription from Student's authorized provider to begin physical therapy with Student during the school day.
36. Accordingly, Parent obtained the prescription documenting Student's need for physical therapy services, and sent it to the educational diagnostician on August 28, 2018.
37. On August 29, 2018, the educational diagnostician sent an E-mail to Parent confirming receipt of the prescription and sent home a request for Parent's consent authorizing an updated physical therapy evaluation.
38. Parent provided written consent for the physical therapy evaluation, and it was completed in October 2018.
39. The IEP Team promptly reviewed the physical therapy evaluation at an October 24, 2018 IEP Team meeting finding Student required services to address coordination and muscle control. The IEP was revised and the District began providing physical therapy services to Student accordingly.

### **CONCLUSIONS**

#### **A. Procedural Safeguards Were Provided to Parent at the August 23, 2018 IEP Team Meeting**

Part B of the IDEA and implementing state and federal regulations outline procedural safeguards to be provided to parents and their children with disabilities to protect their procedural rights. The procedural safeguards include, but are not limited to, the rights of parents to participate in IEP Team meetings for their children, and to receive prior written notice relating to the identification, evaluation, placement, and provision of FAPE to their children.

In this case, the District provided the procedural safeguards to Parent and Student with respect to the August 23, 2018 IEP Team meeting. The District sent timely written notice of the August 23, 2018 IEP Team meeting to Parent in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.1.1. Parent promptly confirmed availability to attend the meeting on the proposed date, time, and location. The written notice of the August 23, 2018 IEP Team meeting identified the individuals who would be in attendance as required by 34 C.F.R. § 300.321(a) and 14 DE Admin Code § 925.21. Parent attended and participated in the August 23, 2018 IEP Team meeting and provided input to the team. The IEP Team members included the individuals required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. The District also sent timely prior written notice to Parent in compliance with 300 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0.

Parent alleges Part B of the IDEA was violated because the District made the unilateral decision for the Deputy Superintendent to attend Student's August 23, 2018 IEP Team meeting. However, Parent made the specific request for the District to exclude the District's Director of Special Services from Student's IEP Team meeting. Importantly, it is the District's responsibility to ensure the IEP Team includes a representative authorized to commit District resources pursuant to 34 C.F.R. § 300.321(a)(4) and 14 DE Admin Code § 925.21.0. When Parent contacted the Deputy Superintendent directly to request monetary reimbursement from the District, and sought a staffing change in physical therapists, the District reasonably responded by including the Deputy Superintendent in Student's IEP Team meeting to address Parent's requests. Parent was notified the Deputy Superintendent would be in attendance at Student's IEP Team meeting by E-mail on August 13 and August 22, 2018. Given the nature of Parent's requests (i.e., monetary reimbursement and staffing change), it was appropriate for the Deputy Superintendent to attend Student's IEP Team meeting, especially since Parent asked for the exclusion of the District level Director of Special Services from the meeting. The District has the final responsibility to convene the IEP Team to include a District administrator or designee authorized to commit resources as required by 34 C.F.R. § 300.321(a)(4) and 14 DE Admin Code § 925.21.0. In this case, the Deputy Superintendent was properly fulfilling this role. I find no evidence to support Parent's contention the Deputy Superintendent generally stated "parents have no rights" at the August 23, 2018 IEP Team meeting. The District must select its District level meeting participant to satisfy the requirements of 34 C.F.R. § 300.321(a)(4) and 14 DE Admin Code § 925.21.0, and the Deputy Superintendent informed Parent accordingly. **For these reasons, I find no violation of Part B of the IDEA and state and federal regulations related to the provision of procedural safeguards to Parent and Student.**

#### **B. Physical Therapy Services Were Provided to Student in a Timely Manner**

State and federal regulations implementing the IDEA require an IEP to include a "statement of special education and related services...based on peer-reviewed research." *See*, 34 C.F.R. § 300.320(a)(4); 14 DE Admin Code § 925.20.1.4. "Related Services" are defined as "supportive services...to assist a child...to benefit from special education." *See*, 34 C.F.R. 300.34; 14 DE Admin Code § 922.3.0. Physical therapy services are considered related services under the IDEA.

Parent claims the District failed to provide physical therapy services to Student at the start of the 2018 - 2019 school year. Pursuant to 24 *Del. C.* § 2612, the District required a renewed prescription from Student's medical provider to provide physical therapy to Student during the school day. Once Parent provided the District with the renewed prescription documenting Student's need for physical therapy services, the District promptly ensured the completion of a physical therapy evaluation. The results of the physical therapy evaluation were reviewed at an October 24, 2018 IEP Team meeting, and physical therapy services were then timely provided to Student consistent with the evaluation. **For these reasons, I find no violation of Part B of the IDEA and state and federal regulations related to the failure to provide physical therapy services to Student.**

**C. Parent’s Attempts to Resolve Concerns Prior to Filing Complaint**

The complaint includes a description of attempts Parent made to resolve Parent’s concerns prior to filing the complaint with the Department. Parent refers to phone conversations with the Director of the Exceptional Children Resources Work Group wherein Parent relayed the concerns to the Director. Parent contends the Director had no interest in correcting the alleged issues, and instead sought to protect the District and the Deputy Superintendent.

The investigation included interviews of the Director of the Exceptional Children Resources Work Group and Parent related to Parent’s contention. Parent’s allegation against the Director is not supported by credible evidence. In sum, Parent was properly advised by the Director a complaint could be filed against the District with the Department and it would be investigated pursuant to state complaint procedures. Accordingly, Parent filed a complaint against the District resulting in this investigation and decision consistent with state and federal special education regulations.

**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. In this case, no violation of Part B of the IDEA was identified. Therefore, no further action by the DDOE shall be taken.

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