

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 19-08 (May 10, 2019)**

On March 12, 2019, Parent filed a complaint with the Delaware Department of Education (“the Department”). The complaint alleges the School District (“the District”) violated state and federal regulations concerning the provision of a free, appropriate public education to Child. 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 Child’s educational records, correspondence with Parent and the District staff, and documents provided by Parent and the District. Interviews were conducted with Parent and the District staff.

**COMPLAINT ALLEGATIONS**

Parent alleges the District violated Part B of the Individuals with Disabilities Education Act (“IDEA”) and corresponding state and federal regulations by failing to provide Child with special education and related services, including speech and occupational therapy, in the least restrictive environment (“LRE”) during the 2018 - 2019 school year as required by Child’s Individualized Education Program (“IEP”).

**FINDINGS OF FACT**

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

1. Child is X (X) years of age and a resident of the State of Delaware. Child is enrolled in the School District and eligible to receive special education and related services under the disability category of autism as defined in 14 DE Admin Code § 925.6.6.
2. (Redacted for Student confidentiality.)
3. (Redacted for Student confidentiality.) School District, under the jurisdiction of the School District Board of Education, provides special education and related services for children who are Delaware residents ages three (3) and four (4) and eligible for services under Part B of the IDEA.
4. The District does not operate its own preschool program or elementary school (redacted for Student confidentiality).

Prior State Complaint Decision, AC 18-01

5. The current State Complaint arises, in part, from a prior State Complaint decision (AC 18-01) rendered against the School District on October 2, 2017.
6. On August 3, 2017, Parent filed a prior State Complaint (AC 18-01) with the Department against the School District when Child was X (X) years of age. At that time, the District proposed Child's placement in the early childhood education program at the County Autism Program at a January 23, 2017 meeting because the District was not able to provide appropriate services within the District.
7. While Parent agreed with the Part B eligibility decision, and Child's educational need for intensive special education support and services, Parent rejected the proposed placement at the County Autism Program. Parent felt the County Autism Program was too far in travel distance from Child's home. The approximate distance between Child's home and the County Autism Program is forty (40) miles. At the time, the District proposed to transport Child daily on a school bus for four (4) hours. The duration of the bus ride was two (2) hours each way because the driver would have to pick up and drop off other students.
8. The County Autism Program is a county wide public program within the Z School District serving children with moderate to severe disabilities ranging from ages three (3) to twenty-one (21) and providing an early childhood education program to eligible children living in Sussex County. The County Autism Program is also the Sussex County branch of the Delaware Autism Program, serving children from birth to age twenty-one (21).
9. Parent's primary concern was the length of time Child would be on the bus (four (4) hours a day) and the distance from Child's home to the County Autism Program (about forty (40) miles) each way.
10. The Department issued a decision on October 2, 2017 finding the District violated Part B of the IDEA by failing to develop an appropriate IEP for Child and proposing the educational placement without proper consideration of the least restrictive environment factors. There was no evidence the District addressed the LRE factors when proposing Child's placement within the County Autism Program.
11. To address the denial of services and regulatory violations, the Department directed the District to complete student level and District level corrective actions.
12. The District was directed to schedule an IEP Team meeting for Child on or before November 3, 2017 to develop an IEP based on Child's individualized needs and to ensure the needs and services were outlined in the IEP prior to the IEP Team proposing the educational placement. The District was also directed to determine an appropriate educational placement consistent with LRE provisions.

13. In addition, the District was directed to ensure the IEP does not necessitate Child to be riding on a bus for four (4) hours a day to receive FAPE.
14. The District was further directed to develop a written plan of compensatory services to remedy the denial of services to Child for the period January 25, 2017 to the date the IEP was properly developed and proposed at the IEP Team meeting.

The District's Implementation of the Corrective Action

15. On October 17, 2017, the District sent timely written notice of a November 2, 2017 IEP Team meeting to Parent in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.1. The purpose of the meeting was to develop Student's IEP.
16. Child's November 2, 2017 IEP was developed to include annual goals for decreasing elopement behaviors, appropriate toy play, communication, socialization, and reducing aggression. The IEP describes Child's needs for small group and individualized instruction in the areas of communication, behavior, and socialization, with positive behavior interventions, supports, and strategies to support Child's learning, as well as group and consultative speech therapy.
17. In addition, the IEP Team developed a "compensatory services plan" outlining the number of hours and the manner Child would receive compensatory services to remedy the prior denial of services identified in the October 2, 2017 State Complaint decision (AC 18-01).
18. Importantly, the A School District is a neighboring public school district to the School District and provides a full day preschool program for its students with autism. Given Child's intensive needs in the areas of communication, socialization, and behavior, the School District proposed Child's placement in the comprehensive autism program in the neighboring A School District.
19. Typically, the A School District serves its own preschool students with disabilities, but, in this case, agreed to accommodate the School District's request to serve Child in its autism program.
20. The School District and A School District entered into an Inter-District Student Education Funding Agreement on or about November 17, 2017 providing in relevant part, that Child would attend the A School District's autism program for the 2017 – 2018 school year and the School District shall remain responsible for ensuring FAPE is provided to Child. The Agreement included an expiration date of June 30, 2018, and noted the Districts may mutually agree to continue the Agreement for a subsequent school year.

21. The November 2, 2017 IEP Team meeting minutes document the IEP Team's proper consideration of LRE factors when rendering Child's placement decision within the preschool autism program in the A School District.
22. In addition, the IEP Team agreed the compensatory services would be delivered to Child during the period of time Child attended the A District's full day preschool autism program. The compensatory service delivery was projected to take two school years to complete as Child already had a full day of preschool services, and the compensatory services were in addition thereto.
23. The November 6, 2017 prior written notice states, in relevant part:
  - (a) Child is eligible for twelve (12) month programming as a student with autism.
  - (b) Child's identified needs are in the areas of toy play, communication, socialization, and behavior.
  - (c) Child will receive specialized transportation to A School District with a monitor.
  - (d) Placement will be in a separate special education classroom at the preschool autism program within the A School District.
24. Parent agreed with the program and placement decision, and Child began attending the A School District in November 2017. The IEP was implemented and dated November 17, 2017 through November 1, 2018.
25. During the 2017 - 2018 school year, the A School District convened the IEP Team periodically to review Child's educational needs, services, and progress. The IEP Team conducted an annual review and revision of Child's IEP on January 17, 2018, and made further revisions on April 25, 2018. The revised IEP was dated January 17, 2018 through January 16, 2019. The school psychologist and speech and language pathologist from the School District participated in April 25, 2018 IEP Team meeting, but not the January 17, 2018 IEP Team meeting because the A School District mistakenly did not invite School District's staff.
26. Child attended the program within the A School District from November 2017 and participated in the twelve (12) month program.
27. The School District reported the compensatory services were being provided to Student in the 2017 - 2018 school year while Child attended the A School District's program.
28. The School District administration assumed the A School District agreed to continue to serve Child in the 2018 - 2019 school year because the A School District

was providing preschool services to Child after June 30, 2018, and had not previously notified the School District of an intent not to renew.

Relevant Facts from the 2018 - 2019 School Year

29. On Friday, September 14, 2018, however, Parent was abruptly notified by the A School District administration that, as of this date, Student could no longer attend the A School District preschool autism program. Parent was advised that A School District had its own students to serve.
30. On the same date, the A School District notified the School District school psychologist that September 14, 2018 would be Student's last day in the A School District.
31. On Monday, September 17, 2018, the special education coordinator promptly contacted Parent to advise the School District could implement Student's current IEP at the Elementary School preschool program for four (4) year olds (Redacted for confidentiality).
32. But, the School District preschool program is only a half day program in comparison to the full day program Child was receiving through implementation of the IEP at A School District.
33. On September 17, 2018, Parent visited the Elementary School to enroll Child and was advised to provide verification of income to satisfy one of the program's eligibility requirements. Parent declined to provide documentation of income.
34. Parent also advised the special education coordinator the Elementary School Program was not acceptable because it was only a half day program, the classrooms did not primarily focus on serving students with autism. In addition, Child's IEP required placement in a special education classroom.
35. On September 19, 2018, Parent again contacted the special education coordinator expressing rejection of the part time program at Elementary School for Child.
36. On September 19, 2018, the District sent written notice of a September 27, 2018 IEP Team meeting and an E-mail notifying Parent of the IEP Team meeting date. Parent signed a waiver of the right to receive ten (10) school days prior notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0.
37. On September 27, 2018, the IEP Team convened to review and revise Student's IEP and determine Child's educational placement. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent attended and participated in the meeting.
38. The IEP Team meeting minutes state, in relevant part:

- (a) Parent feels Child will not progress in a half day program at Elementary School as Child was attending a full day program at A School District.
  - (b) The instructional preschool day at Elementary School is the morning session of 8:15 a.m. to 10:45 a.m. and the afternoon session of 12:15 p.m. to 2:45 p.m. There was no available option for Child to attend both daily preschool sessions at Elementary School.
  - (c) The classrooms at Elementary School do not serve a specific disability, but services are based on what each child's IEP requires.
  - (d) If Child attended Elementary School, Child would be placed in a regular education classroom with a paraprofessional certified in early childhood education. The special education teacher would provide push in and pull out services, as well as the speech language therapist.
  - (e) The team discussed the potential option of having a 1:1 in place for Child for a half day at Elementary School and half day at a private day care or preschool.
  - (f) The District contacted B School District to explore Child's placement at its autism program, but the program is open to B School District students only.
  - (g) The District agreed to explore providing special education services to Child in a private preschool setting.
  - (h) Parent rejected any proposal for Child's attendance at the County Autism Program even with private, direct transportation
39. The District investigated the option of Child attending A School District's Head Start program as documented on the District's record of contacts form, and decided it would not meet Child's needs.
40. At the conclusion of the September 27, 2018 meeting, the IEP Team proposed implementation of Child's existing IEP in Elementary School's preschool program.
41. But, Child's IEP required Child's placement in a separate, special education classroom. The IEP Team meeting minutes state Child would be placed in a regular education classroom, which was not consistent with Child's IEP.
42. In addition, the IEP Team did not fully address or finalize how Child's needs would be met in the shortened, half day program at Elementary School. The IEP Team discussed options and possibilities for a full day program, but it did not materialize to a final placement proposal to Parent and was not explained in a prior written notice. It was not clear how Child's IEP would be implemented in a shortened, half day program, or what the full day program would include, and where it would be provided.

43. The District did not issue a prior written notice pursuant to 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0 following the September 27, 2018 IEP Team meeting.
44. In the interim, Child was not attending any public preschool program.
45. On October 8, 2018, the District sent a written notice of an October 8, 2018 IEP Team meeting. Parent signed a waiver of the right to receive ten (10) school days prior notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0.
46. On October 8, 2018, the IEP Team convened to continue discussion of the program options for implementation of Child's IEP. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent attended and participated in the meeting.
47. The IEP Team meeting minutes state, in relevant part:
  - (a) The District agreed to investigate Child's attendance at the preschool program at a local private daycare and preschool, as an option.
  - (b) The IEP Team discussed Child's kindergarten placement for the 2019 – 2020 school year, and option to choice in the A School District or attend Elementary School.
  - (c) Parent asked about the compensatory services owed to Child. The District responded the hours would be added to the compensatory services plan.
48. The District did not issue a prior written notice pursuant to 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0 because the District did not propose revisions to Child's program or placement at the October 8, 2018 IEP Team meeting.
49. The supervisor of special education provided documentation confirming the District investigated local private daycare and preschool's program as an option for Child on or about October 11, 2018, and determined the program would not meet Child's needs.
50. On October 31, 2018, the District sent timely written notice of a November 16, 2018 IEP Team meeting to Parent. The purpose of the meeting was to conduct an annual IEP review.
51. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent attended and participated in the meeting.
52. The IEP was revised with implementation dates of December 5, 2018 to November 15, 2019. The IEP states, in relevant part:
  - (a) Child demonstrates significant weaknesses in communication, language, and social and pragmatic skills across all settings which impact Child's ability to

communicate and interact/engage easily and successfully with others (adults and peers) and which impact the willingness to engage in tasks when Child perceives the task to be anything other than play based with preferred toys over more structured academic type readiness tasks.

- (b) Child requires intensive programming emphasizing the development of communication and language, socialization, self-help, and pre-academic readiness skills, as well as the teaching of functionally equivalent alternative behaviors via multimodal teaching methodology, direct instruction, and consistent positive reinforcement of appropriate behaviors.
- (c) Child demonstrates weakness in self-help skills involving eating with a utensil. Child prefers eating with the hands. Child still wears a pull-up and will attempt to toilet when taken. Child has weaknesses in fine motor skills and struggles with printing numbers, letters, or shapes.
- (d) The IEP annual goals are in the areas of improving functional communication and language skills, improving preschool readiness skills, improving social engagement and turn taking, and improving self-help skills for eating.
- (e) Child's educational needs are in the areas of behavior, communication, and socialization requiring Child to receive:
  - (i) Individual and small group instruction within a small group setting for repeated trials and numerous opportunities for self-help skills throughout the school day;
  - (ii) Small student to staff ratio and consistency among staff for teaching purposes;
  - (iii) Staff support through the school day for generalization of self-help skills;
  - (iv) Specific attention to prompting and error correction strategies;
  - (v) Training of functionally equivalent replacement skills;
  - (vi) Teaching of skills within naturally occurring sequences throughout the school day;
  - (vii) Discrete trials for teaching and reinforcing the self-help skills across the school day in all setting;
  - (viii) Direct communication/language and social pragmatic therapy and consultative services by a speech language pathologist supported through the day by classroom staff; and



- (vii) A multi-modality communication approach that consists of photos/pictures, signs/gestures, and verbal speech models/cues to facilitate communication and language skills and reinforce social and pragmatic skills.
53. Pursuant to the IEP, Child would receive speech and language therapy delivered in group, individual, and consultative for the frequency and duration outlined in the IEP.
  54. The IEP Team determined Child's educational needs could be met in a separate special education classroom with less than fifty (50%) of children without disabilities.
  55. The IEP notes Child's significant needs in the areas of communication, socialization, and behavior require the intense and comprehensive services available at the Delaware Autism Program at the County Autism Program in the Z School District.
  56. The District agreed to provide Child with private and direct transportation to and from home to the County Autism Program so Child would have only one (1) hour on transportation daily each way.
  57. The District provided Parent with the procedural safeguards and timely prior written notice proposing the IEP and placement.
  58. The November 19, 2018 prior written notice states, in relevant part:
    - (a) The District is proposing placement at the County Autism Program in the Z School District; and
    - (b) Child will receive private, direct transportation and to and from home to the County Autism Program.
  59. On November 27, 2018, Parent sent an E-mail to the special education coordinator rejecting the County Autism Program due to the travel distance from home to school.
  60. Given Parent's rejection of the program, Child has not returned to a public preschool special education program since approximately September 2018.
  61. In January 2019, the District requested to proceed with evaluating Child's occupational therapy needs, and Parent provided the written consent to evaluate on or about January 28, 2019.
  62. On February 12, 2019, the District sent Parent prior written notice informing Parent of the District's proposal to conduct an occupational therapy evaluation.
  63. Parent then filed a complaint with the Department on March 12, 2019 alleging the District violated Part B of the IDEA by denying Child an appropriate special education program and placement.

64. On March 14, 2019, the occupational therapy evaluation was completed.
65. On March 15, 2019, the District sent written notice of an April 1, 2019 IEP Team meeting to Parent. The purpose of the meeting was to review the results of the occupational therapy evaluation, and develop, review, and revise Child's IEP.
66. Parent was not able to attend the April 1, 2019 meeting and it was not held on this date. With Parent's consent, the meeting was rescheduled to April 8, 2019.
67. On April 1, 2019, the District sent another written notice of an April 8, 2019 IEP Team meeting to Parent. Parent signed a waiver of the right to receive ten (10) school days prior notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.0.
68. On April 8, 2019, the IEP Team convened to review the results of the occupational therapy evaluation. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent attended and participated in the meeting.
69. Child's IEP was revised to include occupational therapy services and goals.
70. The District sent timely written notice to Parent on April 9, 2019 proposing the revisions to Child's IEP.
71. The April 9, 2019 prior written notice states, in relevant part:
  - (a) Child's IEP was revised to include occupational therapy services and goals.
  - (b) Child's proposed program and placement is at the County Autism Program in the Z School District with private and direct transportation to and from home to the County Autism Program.
  - (c) Child's proposed program and placement for kindergarten for the 2019 - 2020 school year is the Elementary School.
72. Parent did not sign the revised IEP in agreement with the proposed program or placement.

## **CONCLUSIONS**

### ***A. Prior Written Notice Not Provided And FAPE Not Proposed in September 2018***

Prior written notice must be provided to the parents of a child with a disability no less ten (10) school days before a school district 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.

Prior written notice serves the important purpose of notifying the parent of the specific special education program and placement the school district is proposing. If the parent then disagrees with the proposed program and placement, the parent can exercise the procedural safeguards prior to the school district implementing the proposed program.

Unfortunately, and to Child's detriment, Parent was abruptly notified on September 14, 2018 Child could no longer attend the A School District preschool autism program as of that date. This decision did not benefit Child's educational needs. It also left the School District administration in the position of devising a service plan for Child with no advance notice. More importantly, it caused an abrupt break in Child's and Parent's daily routines, and interrupted Child's receipt of preschool services and therapies after Child had been in the same program for almost one (1) year with consistent, familiar teaching staff and peers.

As noted, the special education coordinator promptly contacted Parent on September 17, 2018 to advise the School District could implement Student's then current IEP at the Elementary School preschool program for four (4) year olds (Redacted for confidentiality). But understandably, Parent was concerned because Elementary School only had a half day program, in contrast to the full day program of services and therapies Child was receiving through implementation of the IEP at the A School District.

On September 27, 2018, when the IEP Team convened to review and revise Student's IEP and discuss Child's educational placement, it formally proposed Child's attendance in the preschool program at Elementary School. It appears when Parent verbalized rejection of the program, the IEP Team did not continue deciding with specificity how FAPE would be offered to Child in the Elementary School program, especially as it relates to the half day versus full day program. The IEP Team discussed options and possibilities for a full day program that would be explored, but it never materialized to a final program proposal to Parent on September 27, 2018, nor was it explained in a subsequent prior written notice. It was not clear how Child's IEP would be implemented in a shortened, half day program, or what a full day program would definitively include, and where it would be provided.

In addition, Child's IEP required Child's placement in a separate, special education classroom. The IEP Team meeting minutes reflect Child would be placed in a regular education classroom at Elementary School, which was not consistent with Child's IEP.

Under these circumstances, the failure to issue prior written notice and determine specifically how Child's IEP would be implemented in Elementary School's program, and through a full day or half day program, resulted in a denial of FAPE as of September 17, 2018. I recognize the District was responding to Parent's concerns and trying to reach an agreement with Parent, but the District had a duty to propose FAPE even if Parent did not agree with the proposed program and placement at the meeting. The IEP Team did not fully address or concretely finalize how Child's special needs would be met in the proposed half day program at Elementary School. **For these reasons, I find a violation of the IDEA and corresponding state and federal regulations regarding the provision of prior written notice and the provision of FAPE as of September 17, 2018.**

***B. FAPE Proposed to Child Through The November 16, 2018 IEP With Direct And Specialized Transportation***

The IDEA and implementing state and federal regulations require school districts to provide a free appropriate public education to students with disabilities. *See*, 20 U.S.C. § 1401(9): 34 C.F.R. § 300.101(a): 14 DE Admin Code § 923.1.2. FAPE is special education that is specialty designed instruction, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and related services, as defined by the DDOE rules and regulations approved by the State Board of Education, and as may be required to assist a child with a disability to benefit from an education that:

- (a) Is provided at public expense, under public supervision and direction and without charge in the public school system;
- (b) Meets the standards of the Department of Education;
- (c) Includes elementary, secondary or vocational education in the State;
- (d) Is individualized to meet the unique needs of the child with a disability;
- (e) Provides significant learning to the child with a disability; and
- (f) Confers meaningful benefit on the child with a disability that is gauged to the child with a disability potential.

*See*, 14 Del. C. § 3101(5).

In this case, the IEP Team revised Student's IEP at the November 16, 2018 annual IEP Team meeting, including the provision of procedural safeguards to Parent. Parent participated in the IEP Team meeting, and received timely written notice of meeting and prior written notice. The IEP includes appropriate services, supports, and accommodations to meet Child's educational needs in the areas of behavior, toy play, communication, and socialization requiring Child to receive individual and small group instruction within a small group setting for repeated trials and numerous opportunities for self-help skills throughout the school day. The IEP outlines Child's needs for small student to staff ratio and consistency among staff for teaching purposes, and teaching of skills within naturally occurring sequences throughout the school day. The IEP Team concluded Child's needs are significant in the areas of communication, socialization, and behavior requiring placement in a special education classroom with the intense and comprehensive services available at the Delaware Autism Program within the County Autism Program in the Z School District.

The District proposed Child's educational placement at the County Autism Program in conformity with LRE requirements and 34 C.F.R. § 300.320 and 14 DE Admin Code § 925.20. A school district responsible for providing FAPE to a preschool age child must ensure that FAPE is provided in the least restrictive environment where the child's unique needs (as described in the IEP) can be met, regardless of whether the school district operates a public preschool program for children with disabilities or not. If the school district does not offer a public preschool program, the school district must consider alternative methods to ensure the LRE requirements are met for each preschool child with a disability, which may include:

- (1) Providing opportunities for the participation of preschool children with disabilities in preschool programs operated by other public programs, such as Head Start and community-based child care facilities;
- (2) Enrolling preschool children with disabilities in private preschool programs;
- (3) Locating classes for preschool children with disabilities in regular elementary schools; or
- (4) Providing home-based services.

*See, Dear Colleague Letter: Preschool Least Restrictive Environments, 69 IDELR 106 (OSEP 2017). See also, 34 C.F.R. § 300.114 through 300.118.*

Importantly, the child's educational placement must be based on the child's IEP. Following the development of the child's IEP, the IEP Team determines the child's educational placement in the LRE based on the child's individual needs and the services identified in the IEP. *See, 34 C.F.R. 300.116(b); 14 DE Admin Code § 923.16.2.* Consistent with LRE considerations, the child's placement should be as close as possible to the child's home. *See, 34 C.F.R. § 300.116(b); 14 DE Admin Code § 923.16.2.*

In this case, when determining Child's educational placement, the IEP Team properly considered least restrictive placement options, including local private daycare and preschools and determined, even with push in support, the private programs could not meet Child's unique needs as identified in the IEP. The IEP Team meeting minutes and interviews with District staff and Parent support the conclusion the LRE factors were considered.

The County Autism Program is an appropriate program for Child and the prior written notice and IEP Team meeting minutes reflect consideration of LRE factors related to Child's educational placement and individualized consideration of Child's transportation needs. The District proposed a transportation plan based on an individualized assessment of Child's specific needs and in conformity with Part B requirements. The County Autism Program is approximately forty (40) miles from Child's home. The transportation plan met Child's needs by providing direct, private transportation and reducing the travel time to approximately one (1) hour each way.

With respect to length of bus trips to and from school, neither IDEA nor its implementing regulations specify a limit on the maximum amount of travel time for a child with a disability. In determining the reasonableness of the travel time to the County Autism Program, the District considered the length of the travel time, the proximity of Child's home to the placement, and the

overall impact on Child. In this case, the IEP Team did not identify an individualized need that would be negatively impacted by the length of the one (1) hour travel each way. The IEP Team's reduction of Child's travel time through the provision of private transportation to and from the County Autism Program is reasonable. **Therefore, I find no violation of IDEA or corresponding regulations regarding the provision of FAPE once it was proposed through the IEP developed on November 16, 2018.**

### **CORRECTIVE ACTION**

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

#### **Student Level Corrective Actions**

1. **On or before June 14, 2019**, the District shall develop a written plan of compensatory services to be provided to Child for the denial of FAPE between September 17, 2018 and November 17, 2018. The District shall submit a written explanation of how the amount of compensatory services were calculated. The District shall also submit a specific plan for delivering the compensatory services to Child, including a timeline for service delivery and how the services will be provided, in consultation with Parent. The compensatory services may be provided on an itinerant basis, or in the home setting, and must be based on Child's identified needs described in the IEP. The written plan shall be provided to the Department's Director of the Exceptional Children Resources Work Group **on or before June 21, 2019**.
2. The Department recognizes the District has yet to deliver all the compensatory services owed to Child under the November 2017 compensatory service plan from the October 2, 2017 State Complaint decision. **On or before June 14, 2019**, the District shall review the November 2017 compensatory service plan, in consultation with Parent, and determine:
  - (a) how many compensatory service hours were actually provided to Child under the November 2017 compensatory service plan, on what dates, and in what setting; and
  - (b) how many additional compensatory service hours are owed to Child under the November 2017 compensatory service plan which may have accumulated due to the termination of Child's attendance in the A School District program as of September 17, 2018 through the current date;
3. The District shall review and amend the November 2017 compensatory service plan, as necessary, to address the total number of compensatory service hours currently owed to Child with a written explanation of the timeline for service delivery, and how the services will be provided, in consultation with Parent. The compensatory services may be provided on an itinerant basis, or in the home setting. The amended written plan shall be provided to the Department's Director of the Exceptional Children Resources Work

Group **on or before June 21, 2019**, and shall include the components described in Paragraphs 2(a) and (b), and identify the name of the therapist or provider who provided the services. The District shall provide an accounting of the compensatory service hours already provided, and an itemized calculation of the additional compensatory service hours owed pursuant to the November 2017 compensatory service plan.

4. **On or before June 30, 2019**, the District shall convene an IEP Team meeting to review and revise Child's IEP, and discuss issues to include, but not limited to:
  - (a) Child's participation in the twelve (12) month program and receipt of services over the summer months; and
  - (b) Implementation of compensatory services.

#### **District Level Corrective Actions**

1. On or before **August 16, 2018**, the District shall ensure professional development is provided to District special education staff and administrators regarding the prior written notice requirement and the IEP Team responsibility to propose and communicate to parents in the prior written notice a specific education program based on the child's individualized needs (i.e. FAPE) and consistent with the IEP, including the educational placement.
2. Copies of professional development materials, PowerPoint presentations, agendas, and attendance rosters shall be provided to the Department's Director of Exceptional Children Resources Work Group on or before **August 23, 2019**.

By:  
Complaint Investigator