

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL STUDENT RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 19-09 (May 20, 2019)

On March 21, 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 by failing to timely conduct a special education evaluation of Student and determine eligibility for Part B special education and related services. 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 and the District. Interviews were conducted with Parent and the District’s staff.

COMPLAINT ALLEGATIONS

Parent alleges in the complaint:

1. The District did not conduct a special education evaluation of Student and determine eligibility within the required timeline in violation of Part B of the IDEA and corresponding state and federal regulations.
2. The District failed to provide Student with a behavior intervention plan based on Student’s needs.
3. The District failed to provide Parent with a language interpreter and Parent has limited English proficiency.

FINDINGS OF FACT

1. Student is X (X) years of age and attends the X (X) grade at Elementary School within the School District.
2. As background, Student attended X and X (X) grade in Puerto Rico. Parent reported Student was moved up to the X (X) grade in Puerto Rico before Student was ready. In 2017 – 2018, Student’s family moved to the United States and Student repeated X (X) grade in another state, and finished the last month in another School District in Delaware.

3. Student is therefore repeating X (X) grade at Elementary School for the 2018 – 2019 school year. Most of Student’s academic experience (i.e. literacy) has been in English. However, Parent is limited English proficient.
4. At Parent’s request, Student began weekly therapeutic sessions in August 2018 with a psychologist through Medical Provider to address Student’s behavioral and emotional health issues.
5. The first day of school was August 27, 2018, but Student did not attend for the first two (2) weeks of school due to a family emergency in Puerto Rico. Student’s absences for this period were excused.
6. At Elementary School, Student was served in a general education classroom with other children in X (X) grade.
7. Early in the school year, school staff would call Parent to report Student’s problem behaviors, to include not listening to teachers, leaving the classroom, taking objects out of the classroom, defiance, and aggression.
8. On or about November 3, 2018, Parent’s classroom teacher completed behavior raters at the request of Medical Provider, and stated, in relevant part:
 - (a) “Two (2) to three (3) times per week [Student] will refuse to engage in daily classroom curriculum. [Student] will put [the] bookbag on and sit in cubby. Although on 11/1/18 [Student] flipped every chair over in my classroom.”
 - (b) “[Student] puts the safety of my other students at risk when [Student] does become physically disruptive.”
 - (c) “On 11/1/18 in the afternoon, after lunch, [Student] did put myself and students in danger. [Student] was silent, not screaming anything as Student turned over every chair in our classroom.”
 - (d) “I told [Student] I would have to restrain [Student] if [Student] did not leave my classroom. That is when [Student] left on [Student’s] own. Another adult was in the room at the time. My students were told to sit quietly on the carpet.”
 - (e) “Usually, [Student] just won’t speak and goes to sit in [the] cubby.”
9. There were occasions when Parent was contacted by school staff to pick up Student from school due to noncompliance and/or defiant behavior. The early dismissals due to behavior were not consistently recorded on the attendance record or behavioral incident record.
10. For example, Student was physically defiant on November 1, 2018 (i.e., flipped over chairs after lunch) and it was not recorded on the behavioral incident list. The attendance

record reflects Student had an early dismissal that day at 1:00 p.m., presumably due to the behavior, but no reason for the early dismissal is listed on the attendance record.

11. There were also occasions when Student was suspended out of school, and the suspension was not recorded on the behavioral incident record or noted on the attendance record as an out of school suspension.
12. For example, Parent received notice of one (1) day out of school suspension for November 8, 2018 because Student was “throwing chairs” on November 7, 2018. But, the November 7, 2018 behavioral incident was not recorded on the behavioral incident list, nor was it recorded as an out of school suspension on the attendance record.
13. On or about November 8, 2018, Parent hand-delivered a psychological evaluation from Medical Provider to the school principal. The school principal reported it was, in turn, provided to the educational diagnostician.¹
14. The November 8, 2018 psychological evaluation noted Parent’s concerns with Student’s aggressive behaviors increasing at home and at school, and noted Student was experiencing family stress and adjustment to a new school. Student was clinically diagnosed with adjustment disorder with mixed emotions and conduct. Student did not meet the frequency or severity indicators for attention deficit hyperactivity disorder, combined or inattentive type.
15. The psychologist from Medical Provider recommended Student receive a bilingual educational evaluation, including assessment in both English and Spanish of intelligence, academic performance, and adaptive skills. Once the bilingual education evaluation was completed, the psychologist planned to further clinically assess Student’s needs, as warranted.
16. The referral for a special education evaluation from Medical Provider focused primarily on Student’s explosive behaviors, noncompliance, and emotional regulation, as reported by Parent and observed in Student, both at home and in school.
17. The psychologist from Medical Provider referred Parent to the Parent Information Center for assistance.
18. On November 15, 2018, Parent received notice of two (2) days out of school suspension for November 16 and 19, 2018 for Student’s offensive touching and “throwing things” on November 15, 2018. However, the November 15, 2018 behavioral incident and the out of school suspension are not recorded on the behavioral incident list or the attendance record.
19. On November 16, 2018, Parent consulted the Parent Information Center and began working with a Parent Consultant (“PIC Advocate”).

¹ The educational diagnostician was not available for interview in the complaint investigation.

20. On November 16, 2018, Parent hand delivered a letter to the school principal requesting a special education evaluation for Student under Part B of the IDEA. Parent requested the evaluation due to Student's low academic progress and behaviors that interfere with Student's learning, citing Student's three (3) days out of school suspension, and work refusal at least two (2) to three (3) times a week.
21. On November 28, 2018, the PIC Advocate contacted the educational diagnostician by phone to inquire about the special education evaluation. The educational diagnostician responded he/she was not aware of Student, or the request for a special education evaluation, and questioned what type of evaluation was requested and the reasons for it.
22. On the same date, the PIC Advocate sent an E-mail to the educational diagnostician requesting a parent conference, and noting Parent would need interpretation services provided by the school. The PIC Advocate also sent Parent's November 16, 2018 letter and the psychological evaluation to the educational diagnostician.
23. On November 29, 2018, Student was suspended out of school again for offensive touching to another student on November 28, 2018. The attendance reflects Student had an early dismissal on November 28, 2018 at 10:54 a.m. due to behavior. But, Student's out of school suspension served on November 29, 2018 was not identified on the attendance record as an out of school suspension.
24. On December 2, 2018, the PIC Advocate sent a follow up E-mail to the school principal asking about the scheduling of the parent conference.
25. The parent conference was scheduled and held on December 12, 2018.
26. The attendees included, Parent, the PIC Advocate, the school psychologist, the school principal, and the educational diagnostician.
27. However, the school did not have interpreter services available at the parent conference, and the school staff used the PIC Advocate as translator for Parent.
28. The school typically did not provide an interpreter for Parent. There were occasions, confirmed by Parent and the school principal, when the school staff would rely on Student to interpret for Parent. Other times, the school staff relied on the custodian to interpret for Parent, and most recently, relied on the PIC Advocate.
29. At the parent conference on December 12, 2018, the school agreed to complete a psychological evaluation of Student in the areas of academic performance, intellectual functioning, and social, emotional, and behavioral status. The school psychologist also agreed to conduct observations of Student and promptly develop a behavior intervention plan to help Student with emotional regulation.

30. On December 12, 2018, the District provided Parent with prior written notice proposing to evaluate Student in compliance with 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0.
31. On the same date, Parent provided the District with signed written consent to evaluate.
32. Within forty five (45) school days, or ninety (90) calendar days, whichever is less, of receiving parental consent to evaluate, the school district must complete the evaluation and convene a meeting to determine the child's eligibility pursuant to 14 DE Admin Code § 925.2.3.
33. In this case, the written consent was provided on December 12, 2018, and Student's evaluation and eligibility meeting were due to be completed on or before February 28, 2019.
34. However, the school staff did not promptly respond to Parent's request for a special education evaluation resulting in a delayed start to the evaluation timeline.
35. Following the parent conference, the school psychologist promptly worked with Parent to complete the behavior raters in Spanish and obtain the necessary background information concerning Student. The school psychologist also conducted direct classroom observations of Student, and provided all the data to the District's bilingual psychologist.
36. On February 5 and 7, 2019, the District's bilingual psychologist visited the school to evaluate Student, but Student was absent on both days and for the rest of the week.
37. On February 22, 2019, the District's bilingual psychologist visited the school to evaluate Student, but Student was absent again.
38. The District's bilingual psychologist, through E-mail, kept Parent and the PIC Advocate informed of the dates the evaluation was attempted, but not completed due to Student's absences.
39. Student's absences were excessive. As of mid-February 2019, Student had over thirty (30) absences primarily for medical appointments, unexcused absences, or health related reasons reported by Parent.
40. Because Student was not attending school with any regularity, the District's bilingual psychologist invited Parent to bring Student to the Child Find office to complete the evaluation in this alternate location.
41. On March 6, 2019, Parent brought Student to the Child Find Office for the District's bilingual psychologist to evaluate Student, but Student was behaviorally disordered and refused to cooperate. As a result, the evaluation was not completed on this date.

42. On March 6, 2019, the District's bilingual psychologist referred the case back to the school psychologist at Elementary School to continue efforts to complete the evaluation on the days Student attended school.
43. The District's bilingual psychologist opined, based on Student's ACCESS scores and other reliable factors, Student could be evaluated in English or Spanish. Student was identified as a mixed dominant speaker, the ACCESS scores were sixes (6s) in the listening and speaking sections, and Student's academic skills were primarily in English. The District's bilingual psychologist agreed to remain on consult with the school psychologist, and depending on the results of the cognitive portion, the District's bilingual psychologist could re-test any areas in Spanish, as needed. Given all the circumstances, referral of the case back to the school psychologist was the most viable option.
44. During the school year, Student's academic skills were developing or unsatisfactory according to Student's report card. Student also received tier two (2) interventions in math and reading for most of the school year.
45. On March 21, 2019, Parent filed this complaint with the Department alleging the District failed to conduct the special education evaluation of Student and determine eligibility within the required timeline in violation of Part B of the IDEA and corresponding state and federal regulations. Parent also alleges the District failed to provide Student with a behavior intervention plan based on Student's needs.
46. During the pendency of the complaint investigation, the school psychologist completed Student's comprehensive evaluation. A written evaluation report is prepared and currently being translated into Spanish for provision to Parent. In relevant part, the school psychologist recommends Student's eligibility for Part B services under the IDEA in the category of emotional disability due to Student's high levels of behavior maladjustment, social and emotional challenges, and the critical impact it has on Student's ability to learn and maintain satisfactory interpersonal relationships. The school psychologist noted Student's eligibility would be determined by the IEP Team pursuant to Part B regulations.
47. An IEP Team meeting is scheduled for May 10, 2019 for the purpose of determining whether or not Student is eligible for special education and related service, developing Student's IEP if eligible, and developing a functional behavioral assessment and behavior intervention plan.

CONCLUSIONS

A. Special Education Evaluation and Eligibility Decision Not Completed Within Required Timelines

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 to evaluate, the initial evaluation must be conducted, and the Student’s eligibility must be determined at a meeting convened for that purpose. *See*, 14 DE Admin Code § 925.2.3.

The District acknowledges Student’s special education evaluation and eligibility determination were not completed within the timeline required by Part B of the IDEA and corresponding state and federal regulations. The District received the parental consent to evaluate on December 12, 2018, and the evaluation and eligibility decision were required to be completed on or before February 28, 2019. The District caused additional delay to the start of the evaluation timeline by not promptly responding to Parent’s request for an evaluation. If the student is found eligible for special education and related services at the IEP Team meeting, compensatory services are warranted to remedy the denial of services to Student caused by the untimely evaluation and eligibility decision. **For these reasons, I find a violation of Part B of the IDEA and the corresponding state regulation at 14 DE Admin Code § 925.2.3 regarding the provision of a special education evaluation within the required timelines.**

B. Inaccuracy of Educational Records

It is important for schools to accurately record disciplinary removals and behavioral referrals as it relates to the provision of FAPE to students and to ensure compliance with IDEA’s procedural safeguards. In this case, there were confirmed occasions when Parent was contacted by school staff to pick up Student from school due to noncompliance and/or defiant behavior. Yet, these early dismissals were not consistently recorded on the attendance record or behavioral incident record. The District did not consistently document some of the instructional time Student missed as a result of behavior by leaving school early. In addition, there were confirmed occasions when Student was suspended out of school, and the suspensions were not recorded on the behavioral incident record or noted on the attendance record as out of school suspensions. **As a result, I find a violation of the IDEA and corresponding state and federal regulations relating to the accuracy of educational records maintained for Student.**

C. Inadequate Language Assistance Provided to Parent

The IDEA and implementing state and federal regulations require school districts to “take whatever action is necessary to ensure the parent understands the proceedings of the IEP Team meeting, including arrangements for an interpreter for parents with deafness or whose native language is other than English. *See*, 34 C.F.R. § 300.322(e); 14 DE Admin Code § 925.22.6.4. In addition, the U.S. Department of Education important policy issued guidance advising:

[State educational agencies] and school districts must provide language assistance to (limited English proficient) parents effectively with appropriate, competent staff – or appropriate and competent outside resources. It is not sufficient for the staff to merely be bilingual. For example, some bilingual staff and community volunteers may be able to communicate directly with (limited English proficient) parents in a different language, but not be competent to interpret in and out of

English (e.g., consecutive or simultaneous interpreting), or to translate documents. School districts should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue. In addition, school districts should ensure that interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

See, Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, U.S. Department of Education (January 7, 2015).

In this case, Parent is limited English proficient. There were occasions, confirmed by Parent and the school principal, when the school would rely on Student to interpret for Parent. The school also relied on the custodian to interpret for Parent, and most recently, relied on the PIC Advocate. **As a result, I find a violation of Part B of the IDEA as it relates to ensuring Parent has adequate language assistance.**

D. Behavior Intervention Plan

Parent alleges the District failed to provide Student with a behavior intervention plan based on Student's needs. At the December 12, 2018 parent conference meeting, Student was not identified as eligible for special education and related services as the initial evaluation process was starting. But, the school psychologist agreed to conduct observations of Student and promptly develop a behavior intervention plan to help Student with emotional regulation. Unfortunately, the behavior intervention plan was not completed by the school psychologist and it contributed to Parent's frustration. **While I do not find a violation of Part B of the IDEA, I find the IEP Team must address Student's behavioral needs appropriately, which may include a behavior intervention plan based on a functional behavioral assessment, if Student is found eligible for special education and related services at the IEP Team meeting.**

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 10, 2019**, the District shall complete the special education evaluation and hold a meeting to determine Student's eligibility, if not already completed. If Student is found eligible for special education and related services, the District shall ensure Student's IEP is developed within thirty (30) days of the eligibility determination consistent with the regulatory requirement, and to include plans for completing a functional behavioral assessment and behavior intervention plan, if deemed appropriate by the IEP Team. The District shall provide a copy of the evaluation summary report to the Department's Director of Exceptional Children Resources Workgroup with the document in English, and translated in Spanish, Parent's native language. If Student is

found eligible for special education and related services, the District shall also provide a copy of the IEP, functional behavioral assessment plan, and behavior intervention plan to the Department's Director of Exceptional Children Resources Work Group **on or before June 17, 2019** with the documents in English, and translated in Spanish, Parent's native language.

2. **On or before June 10, 2019**, the District shall also develop a written plan of compensatory services to be provided to Student for the number of school days between February 28, 2019 (the date the evaluation was due to be completed based on the receipt of parental consent on December 12, 2018) and the date Student's eligibility is determined. The District shall submit a written explanation of how the compensatory services are determined and calculated. The District shall also submit a specific plan for delivering the compensatory services to Student, including a timeline for service delivery and how the services will be provided, in consultation with Parent. The compensatory services may be provided in the home or school setting, and must be based on Student'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 17, 2019**. The District shall also provide Parent with a copy of the compensatory service plan in English and translated in Spanish, on or before **June 17, 2017**.
3. **On or before June 17, 2019**, the school shall review Student's educational records for the 2018 – 2019 school year, including notices of suspension, the behavioral incident list, Student's attendance record, and Parent's excusal notes, and amend Student's records to accurately reflect the dates Student was absent, for full or partial days, due to suspension, or early dismissal, for full or partial days, due to disciplinary behaviors, and which may include reconciling the discrepancies in consultation with Parent. The District shall provide the corrected records to the Department's Director of the Exceptional Children Resources Work Group **on or before June 17, 2019**, to include a summary explanation describing how the records were amended. The District shall ensure the corrected records and summary explanation are provided to Parent, translated in Spanish, on the same date the documents are provided to the Department.

School Level Corrective Actions

1. **On or before September 16, 2019**, the District shall ensure professional development is provided to all special education staff and administrators at Elementary School regarding:
 - (a) the District's child find duty to locate, evaluate, and identify children with disabilities, including a review of the requirements when a parent submits a written or verbal request for a special education evaluation to school administrators;

- (b) the requirement a full and individual evaluation must be conducted, and a child's eligibility determined, within forty-five (45) school days or ninety (90) calendar days, whichever is less, of receiving parental consent to evaluate; and
 - (c) the requirement school staff accurately maintain educational records pertaining to students, including the behavioral incident list, attendance record, and notices of suspension, with consistency and accuracy reflecting dates students are suspended in and out of school, and dismissed early due to disciplinary behavior, with professional development addressing how the inaccuracies in record keeping can result in violation of the procedural safeguards afforded to students and/or deny students FAPE.
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 September 23, 2019.**

District Level Corrective Actions

1. **On or before September 16, 2019**, the District shall ensure professional development is provided to all special education staff and administrators in the District's schools regarding the role of District and school staff to ensure language assistance is provided to all parents with limited English proficiency and the language assistance is effective and provided by appropriate and competent staff or outside resources who are trained on the role an interpreter and translator, properly qualified, and knowledgeable about confidentiality requirements.
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 September 23, 2019.**

By: _____
Assigned Investigator